

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

DEPT. OF TRANSPORTATION  
DOCKET SECTION

96 JUN -4 PM 4:01

0-9485

Joint Application of

UNITED AIR LINES, INC.

and

AIR CANADA

under 49 U.S.C. §§ 41308 and 41309 for  
approval of and antitrust immunity for  
an expanded alliance agreement

Docket OST 96-

1434-1

JOINT APPLICATION OF  
UNITED AIR LINES, INC. AND AIR CANADA

Communications with respect to this document should be sent to:

L. Cameron DesBois, Q.C.  
Vice President and General Counsel  
Geoffrey N. Pratt  
Senior Solicitor  
AIR CANADA  
Law Branch 276, CP 14000  
Saint-Laurent, Quebec H4Y 1 H4  
CANADA

Morris R. Garfinkle  
Anita M. Mosner  
GALLAND, KHARASCH, MORSE  
& GARFINKLE, P.C.  
1054 Thirty-First Street, N.W.  
Washington, D.C. 20007  
(202) 342-5200

Attorneys for  
AIR CANADA

DATED: June 4, 1996

Stuart I. Oran  
Executive Vice President  
Corporate Affairs and General Counsel  
UNITED AIR LINES, INC.  
P. O. Box 66100  
Chicago, Illinois 60666  
(847) 700-5052

Joel Stephen Burton  
GINSBURG, FELDMAN AND BRESS,  
CHARTERED  
1250 Connecticut Avenue, N.W.  
Suite 800  
Washington, D.C. 20036  
(202) 637-9130

Attorneys for  
UNITED AIR LINES, INC.

88pgs

## TABLE OF CONTENTS

I.	INTRODUCTION . . . . .	2
II.	THE ALLIANCE EXPANSION AGREEMENT BETWEEN UNITED AND AIR CANADA WILL BROADEN AND DEEPEN THEIR COMMERCIAL COOPERATION . . . . .	9
III.	THE ALLIANCE EXPANSION AGREEMENT SHOULD BE APPROVED UNDER 49 U.S.C. § 41309 AND ANTITRUST IMMUNITY SHOULD BE ACCORDED UNDER 49 U.S.C. § 41308 . . . . .	14
A.	The Grant of the Joint Application Will Provide important Public Benefits That Will Not Otherwise Be Available . . . . .	14
B.	Approval of and Grant of Antitrust immunity to the Alliance Expansion Agreement Will Advance U.S. Foreign Policy Objectives . . . . .	16
C.	Approval of the Alliance Expansion Agreement and the Grant of Antitrust Immunity Would Be Consistent With the Transportation Code . . . . .	18
1.	The Grant of Antitrust Immunity for the Alliance Expansion Agreement Is Consistent With the Public Interest and the Department's Precedents . . . . .	19
2.	Implementation of the Alliance Expansion Agreement Will Not Substantially Reduce or Eliminate Competition in Air Services . . . . .	20
3.	The Proposed Alliance Will Not Substantially Reduce or Eliminate Competition in Any Market . . . . .	21
a.	<i>Global</i> Alliances . . . . .	22
b.	<i>United</i> States-Canada . . . . .	24
c.	<i>City-Pairs</i> . . . . .	27
d.	<i>Behind and Beyond Gateway Transborder Markets</i> . . . . .	32

D.	United and Air Canada Will Not Proceed With the Alliance Expansion Agreement Without Antitrust immunity .....	33
IV.	OTHER ISSUES .....	34
A.	CRS .....	34
B.	Duration of Approval .....	35
V.	RESPONSE TO REQUEST FOR ADDITIONAL INFORMATION .	35
VI.	CONCLUSION .....	43

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

Joint Application of

UNITED AIR LINES, INC.

and

AIR CANADA

under 49 U.S.C. §§ 41308 and 41309 for  
approval of and antitrust immunity for  
an expanded alliance agreement

Docket OST 96-\_\_\_\_\_

JOINT APPLICATION OF  
UNITED AIR LINES, INC. AND AIR CANADA

United Air Lines, inc. ("United" or "UA") and Air Canada ("Air Canada" or "AC"), and their respective **affiliates** (referred to herein either individually or as the "Joint Applicants"), hereby apply, under 49 U.S.C. §§ 41308 and 41309, for approval of and antitrust immunity for the agreement between the Joint Applicants referred to herein as the "Alliance Expansion Agreement."<sup>1</sup> United and Air Canada request that **antitrust** immunity for the Alliance Expansion Agreement be made effective

---

<sup>1</sup> See Exhibit JA-1. The term "Alliance Expansion Agreement" as used herein means: (1) the agreement entered into by the Joint Applicants on May 31, 1996; (2) the Marketing Cooperation Agreement and Code-Share and Regulatory Cooperation Agreement entered into by the Joint Applicants on May 30, 1995 ("1995 Agreements"), which remain in full force and effect, and which are incorporated by reference into the May 31, 1996 agreement, see Articles 2.1 and 2.4 of the May 31, 1996 agreement; (3) any implementing agreements which the applicants conclude pursuant to the May 31, 1996 agreement, see Articles 2.4 and 5.2 of the May 31, 1996 agreement; and (4) any other agreement or transaction by the applicants pursuant to the foregoing agreements.

immediately and remain in effect for a period of no less than five years. Any action short of prompt approval would produce a serious imbalance in the competitive structure of the **transborder** market and advantage the American/Canadian alliance over the United/Air Canada alliance.

## **I. INTRODUCTION**

Since September **1995**, United and Air Canada have code-shared on several of the **transborder** services they operate between the United States and Canada, and on certain behind- and beyond-gateway services. The parties also participate in each other's frequent flyer programs.

Through their Alliance Expansion Agreement, United and Air Canada intend to broaden and deepen their cooperation in order to improve the efficiency of their coordinated services, expand the benefits available to the traveling and shipping public, and enhance their ability to compete in the global marketplace. Although United and Air Canada will continue to be independent companies, the objective of their Alliance Expansion Agreement is to enable the companies to plan and coordinate service over their respective route networks as if there had been an operational merger between the two firms. in order to implement their Alliance Expansion Agreement, the Joint Applicants will require approval of and antitrust immunity for their Alliance Expansion Agreement, as proceeding forward absent such

approval and immunity would give rise to unacceptable risks of challenges under the U.S. antitrust **laws**.<sup>2/</sup>

As the Joint Applicants establish below, approval of, and antitrust immunity for, the Alliance Expansion Agreement are supported by the many commercial benefits and efficiencies that will flow from implementation of the Agreement. As the Department tentatively has determined with respect to the alliance between American and Canadian, approval of the Alliance Expansion Agreement will enable United and Air Canada:

to operate more efficiently and to provide better service to the U.S. traveling and shipping public, and would allow . . . [United] to compete more effectively with other carriers and alliances in U.S.-Canada **transborder** markets... [Approval would also] be consistent with our policy of facilitating competition among emerging multinational airline networks, where those networks will lead to lower costs and enhanced service for U.S. and international consumers. We fully recognize that the trend toward expanding international airline networks and our action here will allow our airlines to become significant players in the globalization of the airline industry.

Order **96-5-38** at 2.<sup>3/</sup>

---

<sup>2/</sup> **See JA-1** at Article 7.1.2.

<sup>3/</sup> United and Air Canada separately filed answers to the Joint Application of American and Canadian for Antitrust **Immunity** in docket **OST 95-792**, in which they argued that it would be premature for the Department to confer antitrust immunity upon the American/Canadian alliance while the transitional phase of the **1995** U.S.-Canada Air Service Agreement was still in effect. However, in issuing Order **96-5-38**, the Department tentatively determined that the U.S.-Canada bilateral as it now stands is sufficient to support a grant of antitrust immunity, and that DOT policy and precedent do **not** compel disapproval or deferral of the American/Canadian application. if the Department decides to make final its tentative approval of the American/Canadian application, it must approve expeditiously this Joint Application,

(continued...)

The Alliance Expansion Agreement will enable United and Air Canada to offer an enhanced product to consumers while increasing competition in the global marketplace. It will permit the carriers to increase significantly the integration of their route networks, thereby enhancing the efficiency of their operations and facilitating seamless transportation service to the public. As a result, the carriers will be able to expand the network synergies achieved, producing expanded on-line connections, service improvements and lower prices.

Among the more significant economies which the parties expect to achieve are:

- Service Improvements. A more efficient allocation of resources and an expansion of their joint services through integrated schedule and route planning. This integration will enable United and Air Canada to:
  - increase nonstop and connecting services in existing markets served by the United/Air Canada alliance and introduce new service in city-pairs that neither airline can presently serve on a commercially viable basis;
  - provide customers a seamless transportation system that is superior to a system based primarily on code-sharing; andexpand the joint United/Air Canada network by increasing each airline's access to beyond-gateway points, and thereby increase **traffic** over **transborder** city-pairs.
- Lower Fares. The ability to offer lower joint fares and deeper discounts through integration of yield management, pricing and revenue allocation on cooperative services.

---

<sup>3/</sup>(...continued)  
as the findings made in Order 96-5-38 would, mutatis mutandis, apply with equal force here.

- Better Aircraft Utilization. More efficient utilization and better allocation of the two carriers' combined aircraft resources, and the acquisition of aircraft better tailored to respond to consumer demand across the carriers' combined route network.
- Service Consistency. to deliver a consistent, on-line product at the lowest possible cost through integrated product and service standardization.
- Purchase Economies. Lower costs due to economies of scale through integration of purchasing functions.
- Marketing Efficiencies. A reduction in advertising and sales costs, while expanding consumer awareness of the services the parties offer jointly, through consolidation of sales and marketing activities.
- Reduced Transaction Costs. A significant reduction in transaction costs associated with joint United/Air Canada services and undertakings.

United and Air Canada could achieve these same efficiencies by entering into a merger or corporate joint venture to operate U.S.-Canada service. Such a merger or joint venture would clearly pass muster under U.S. antitrust law, as it would be essentially an end-to-end "market extension" **merger**.<sup>4/</sup> However, U.S. and Canadian laws concerning nationality and ownership effectively preclude mergers of, or corporate joint ventures between, U.S. and Canadian airlines. United and Air Canada thus must seek to achieve these efficiencies and economies of scale through contractual agreement.

---

<sup>4/</sup> As discussed below, as of July 1, 1996, United and Air Canada will both provide nonstop service on five **transborder** routes. Currently, the carriers both operate service on seven such routes, but Air Canada has announced that it is discontinuing service on the Denver-Calgary and Denver-Vancouver routes effective July 1, 1996. For further discussion, see Section III(C)(2), infra.



The grant of antitrust immunity also promises to advance the central international aviation policy objective of the United States -- the liberalization of the market for international air transportation. As the Department determined in Order **96-5-38**, approval of commercial alliances between U.S. and Canadian carriers will accelerate liberalization of the international marketplace, thus achieving an important goal of the Departments Open Skies initiative.

In addition, as the Department found in Order **96-5-38**, approval of the Alliance Expansion Agreement and the grant of antitrust immunity would be warranted by foreign policy considerations and is consistent with the newly liberalized Air Transport Agreement between the United States and Canada. Thus, the Department concluded in tentatively granting American/Canadian antitrust immunity:

As a threshold matter, we are prepared to go forward in the absence of full, open-skies provisions only because the **U.S.-Canada** market presents unique circumstances that justify special consideration. The U.S.-Canada relationship is *sui generis*. The two countries share the longest border in the world. The vast majority of Canadians live within an hour's flight of the American border: the resulting majority of relatively short-haul **transborder** markets contrast sharply with transatlantic, transpacific, and even Latin American routes. Instead of a relatively few long-range routes, many much shorter markets bind the two countries together. In addition, the volume of the bilateral market for goods and services **outpaces** every other international market. It is not surprising that these characteristics have created a demand for **transborder** air services that dwarfs all other bilateral markets. It is the largest international passenger market in the world, and growing rapidly. For the United States, Canada is a bilateral market in a class by itself.

. The U.S.-Canada **transborder** market supports more U.S. gateways, nonstop city-pairs, diverse airlines, and competitive **routings** and service options than any other international market. Perhaps most important, at the

conclusion of the brief phase-in of entry and capacity at Montreal, Toronto, and Vancouver, the underlying air transport agreement between the United States and Canada will have created an open environment for **transborder** passenger and belly cargo services and prices. Against this background, we tentatively find that the **U.S.-Canada** aviation relationship justifies positive action on the application before us, to the extent described below.

Order **96-5-38** at **10**. (Footnote omitted).

It having been tentatively determined that the U.S.-Canada Agreement creates an adequate basis for approval of the request of American and Canadian for antitrust immunity, it follows that uniform, fair, and consistent application of regulatory policy mandates an identical finding with respect to the instant request.” As the Department recognized when reviewing the request of American and Canadian for antitrust immunity, an important, clearly intended effect of agreements such as the U.S.-Canada Agreement is to enable U.S. carriers to achieve efficiencies and service improvements such as those the Alliance Expansion Agreement will generate if implemented.

Approval of this Joint Application also is necessary to ensure the existence of a level playing field in the U.S.-Canada market. If the Department determines that

---

<sup>5/</sup> In the **American/Canadian** case, the Department tentatively withheld antitrust immunity for certain services not covered by the U.S.-Canada Agreement. Excluded from immunity were coordination of services in third-country, fifth- and **sixth-**freedom markets and coordination of all-cargo services. Assuming that the Department makes final its tentative decision to exclude these types of services, which are not fully liberalized by the terms of the U.S.-Canada Agreement, United and Air Canada will not press **their** application for immunity for such excluded services. On the other hand, if the Department does not make final these tentative conclusions, United and Air Canada should receive immunity for these services to the same extent it is granted to American and Canadian.

American and Canadian should receive antitrust immunity for their **commercial** activities, but that the competing United/Air Canada alliance should not, the Department would effectively be foregoing the opportunity to take full advantage of the new aviation agreement with Canada to ensure the most competitive **transborder** market structure possible. Having reached a determination that the grant of antitrust immunity to one alliance will enhance competition in the **transborder** market, the Department must act on its determination in an evenhanded **manner**.<sup>6/</sup>

Finally, the approval of the Alliance Expansion Agreement and the grant of antitrust immunity thereto are fully consistent with applicable statutory standards.

Such approval and immunity are in the public interest and will enhance competition.?!

---

<sup>6/</sup> The Canadian Government shares these view. In a Diplomatic Note sent to the United States in early March **1996**, the Canadian Government expressed its sentiments about the objectives of the U.S.-Canada Agreement, globalization, and the importance of commercial alliances. In noting that the extent of the commercial cooperation envisaged by the application for antitrust immunity filed by American and Canadian was fully consistent with the competition laws of the Government of Canada, Canada urged the United States to act favorably on the Canadian/American application for antitrust immunity and **any future similar applications**.

The Canadian Government believes that the [U.S.-Canada Aviation] Agreement has created an appropriate context for the **favourable** consideration of **applications** for anti-trust immunity in the **transborder** market,... The Canadian Government therefore urges the United States Government to consider the **[American/CAI] Application and any future similar applications**, in that light. (Emphasis added).

Thus, the Government of Canada not only **concurs** with the tentative determination of the Department to grant American and Canadian antitrust immunity, but believes that similar applications - **e.g.**, United/Air Canada -- need to receive identical treatment.

<sup>7/</sup> For further discussion, **see** Section III, **infra**.

II. THE ALLIANCE EXPANSION AGREEMENT BETWEEN UNITED AND AIR CANADA WILL BROADEN AND DEEPEN THEIR COMMERCIAL COOPERATION

Pursuant to the **1995** Agreements, United and Air Canada code-share on certain of the **transborder** services which one or the other operates between the United States and Canada!'<sup>8/</sup> In addition, United places its code on flights operated by Air Canada beyond Toronto to Halifax, Ottawa and Quebec, and Air Canada places its code on flights United operates behind Chicago to six points in the United States and beyond Denver to one **point**.<sup>9/</sup> Notwithstanding these code-sharing arrangements, other forms of cooperation between United and Air Canada are relatively limited.

Code sharing by United and Air Canada was initially authorized by the Department as consistent with the public interest by Order **95-10-27**, and by Notice of Action Taken dated August **2, 1995**. In approving the **1995** Agreements between United and Air Canada, the Department found that "[t]he services planned here will significantly expand the service options to the public, offering U.S. and Canadian passengers nonstop and convenient online connecting services to all points in the United States and Canada served by the Joint **Applicants**."<sup>10/</sup>

The Alliance Expansion Agreement provides a contractual framework for significantly broadening and deepening the commercial cooperation that currently

---

<sup>8/</sup> **See JA-2.**

<sup>9/</sup> **See Exhibits JA-3 and JA-4.**

<sup>10/</sup> Order **95-10-27**, at **3-4**.

exists between United and Air Canada, permitting the two airlines to operate, effectively, as a single firm. The essential elements of the Alliance Expansion Agreement include:

1. Route and Schedule Coordination. The carriers agree to conduct joint route and schedule planning throughout their global route networks to the maximum extent feasible. In conducting this joint route and schedule planning, they will seek to maximize the number and quality of traveling and shipping options available to the public without regard for which party is operating the flight, allocate and use the carriers' respective resources and capacities within the United/Air Canada alliance network to maximize their productivity, and enhance the carriers' profitability. This will result in a substantial increase in the **quality** and quantity of seamless on-line services available to passengers and shippers.

2. Marketing, Advertising and Distribution Integration. w i l l seek to integrate their marketing, advertising and distribution networks, programs and systems on a global basis. Specifically, the two carriers plan to market jointly United/Air Canada alliance services to travel agents, governments, corporations and other retail customers. They intend to advertise jointly United/Air Canada alliance services worldwide. In certain geographic areas, they may combine their sales forces, act as general sales agents ("**GSAs**") for each other, coordinate their use of **GSAs**, and **consolidate** their global sales administration and planning functions.

3. Co-Branding and Joint Product Development. I s e e k t o create new joint products and service options, These new products and services,

along with existing products and services offered by either or both parties, may be co-branded. The new United/Air Canada alliance thus will offer the traveling and shipping public a “single-product” service at a uniformly high standard throughout the parties’ combined route networks.

4. ~~Code Sharing~~ will continue to code share on each other’s **transborder** and connecting services, and will seek to expand their **code** sharing on other services as their global integration proceeds.

5. Pricing, Inventory and Yield Management Coordination. The carriers will coordinate pricing, inventory and yield management decisions on services in their combined global networks. Specifically, they plan to develop jointly and coordinate fare products and **inventory** management; prepare bids for corporate, group and government business; and agree upon common auxiliary service charges and standard collection policies, methods and procedures for revenue management.

6. Revenue Sharing. The carriers may share net revenues less certain operating costs for scheduled passenger air transportation on certain routes in accordance with specifications and rules to be established jointly.

7. Joint Procurement. Whenever possible, the carriers will seek to procure goods and services together to reduce **costs**. To this end, they will purchase in greater volume, establish **common** specifications, share knowledge of pricing data, eliminate redundant purchasing activities in certain geographic areas, and create joint purchasing groups.

a. **Support Services.** The carriers will continue to cooperate on ground and in-flight passenger and ramp services in their hub airports, and will seek to extend their cooperation on these services to all airports served by the parties worldwide. To this end, for example, the carriers may implement joint training of crews and other personnel and explore joint purchasing opportunities for their catering operations where feasible.

9. **Cargo Services.** The carriers and their affiliates may seek to integrate their belly cargo services in any and all applicable key integration areas identified in the Alliance Expansion Agreement. For example, they **could** seek jointly to develop express cargo products, jointly use cargo facilities and terminals, share revenues, coordinate **cargo** ground handling and road feeder services, and harmonize standards for their cargo products and **services**.<sup>11/</sup>

10. **Information Systems.** ~~will~~ seek to harmonize existing internal information systems, including those governing inventory, yield management, reservations, ticketing, and distribution. The carriers also plan to develop jointly new information technologies to facilitate compatible ticketing systems and products, distribution channels, flight planning, accounting, maintenance, and such other systems and functions as the parties may identify from time to time. The parties

---

<sup>11/</sup> As noted previously, based on the Department's tentative findings in Order **96-5-38**, the Joint Applicants are not seeking immunity with respect to all-cargo services in circumstances where the provisions of the U.S.-Canada Air Services Agreement do not fully liberalize all-cargo services. However, as the Department tentatively concluded in approving the American/Canadian alliance expansion, there are no such considerations that would preclude the issuance of antitrust immunity for integration of belly freight services. Order **96-5-38** at **13, n.28**.

ultimately seek to integrate all their information technology systems as required by the carriers' operational integration.

11. **Frequent Flyer Programs**. The parties will continue to coordinate their frequent flyer programs, and may fully integrate these programs.

12. **Financial Reporting**. To facilitate revenue sharing and to promote easier coordination of yield management, the parties may harmonize their financial reporting practices, including revenue and cost accounting practices.

13. **Harmonization of Standards and Quality Assurance**. The parties believe that there are substantial benefits to be gained by providing common services of a consistently high standard throughout their two networks. To this **end**, they shall seek to harmonize their product standards, service levels and in-flight amenities.

14. **Technical Services/Maintenance** explore the possibility of providing each other with aircraft and ground equipment, and technical and maintenance services at appropriate locations.

15. **Facilities**. The parties will seek to share facilities and services at airports served by the flights of both parties.

Consistent with the parties' goal of achieving a market-extending operational merger, the Alliance Expansion Agreement contemplates a division of responsibilities between the carriers: United will operate services for the alliance between points in the United States, while Air Canada will operate services for the alliance between points in Canada. Both carriers will continue to operate services for the **alliance** on **transborder** routes.



As noted above, it is a condition precedent of the Alliance Expansion Agreement that the parties be immunized from liability under the antitrust laws pursuant to **49 U.S.C. §§ 41308 and 41309** for all activities provided for in that Agreement. United and Air Canada will begin the process of implementing the Alliance Expansion Agreement immediately upon the grant of such immunity.

III. **THE ALLIANCE EXPANSION AGREEMENT SHOULD BE APPROVED UNDER 49 U.S.C. § 41309 AND ANTITRUST IMMUNITY SHOULD BE ACCORDED UNDER 49 U.S.C. § 41308**

A. **The Grant of the Joint Application Will Provide Important Public Benefits That Will Not Otherwise Be Available**

The Alliance Expansion Agreement is intended to enable the carriers to develop an integrated global route network built upon a multi-hub operating system. Since deregulation, the majority of U.S. airlines have reorganized their domestic route structures into hub-and-spoke systems in order to respond better to consumer demand for an efficient, on-line, seamless transportation product, to reduce costs, and to provide lower-priced service. As a result of this reorganization, U.S. carriers have been able to achieve internally significant economies of **scope** and scale and to pass those economies on to **consumers** in the form of lower prices and improved service.

Carriers such as United and Air Canada now seek to extend the advantages of this model to the international sphere. In so doing, they must overcome regulatory and commercial constraints that effectively preclude any one airline from **setting** up a

global system. In addition, while carriers have been able to build their domestic networks, in part, by acquiring assets from others, the ownership and nationality limitations imposed in civil aviation agreements, the proscriptions on **cabotage** sanctioned by the Chicago Convention, and the foreign investment laws widely in force around the world prevent the effective use of mergers, corporate joint ventures, or acquisitions to build global networks. De novo creation of a global multi-hub network would require an investment in equipment, rights, and promotion that is prohibitive.

Given the regulatory obstacles to international airline mergers and the high costs of developing a hub system in a foreign country, carriers have turned to code sharing as the next most efficient means of developing global route networks. Code sharing, however, does not provide the efficiencies and consumer benefits that would potentially be available from the creation of a fully integrated multi-hub system. As clearly shown by the description in Section II above of the Joint Applicants' plans for the development of their joint system, the creation of **a** true global network requires forms of business integration that go far beyond mere code sharing.

The key advantage offered by this new global model is that it enables carriers to offer consumers a seamless, on-line transportation product. Carriers in the air transport industry are working to develop the integrated global networks that can provide passengers such a seamless service. The **1995** Agreements marked the beginning for United and Air Canada of the development of the type of global **multi-**hub network that is essential to respond to the demands of **consumers** for improved

service in the international marketplace. While code sharing is a necessary component of a global network, it alone cannot guarantee integrated worldwide service at a consistently high quality. Such service requires closer integration of corporate decisionmaking. Moreover, the development of innovative new services -- a primary goal of the Alliance Expansion Agreement -- also requires closer collaboration between United and **Air** Canada.

**B. Approval of and Grant of Antitrust Immunity to the Alliance Expansion Agreement Will Advance U.S. Foreign Policy Objectives**

In tentatively approving the request of American and Canadian for antitrust immunity, the Department determined that its approval would advance the foreign policy objectives of the United States, and would be consistent with the close bilateral aviation relationship between Canada and the United States. DOT Secretary **Peña** remarked on the first anniversary of the landmark **1995** U.S.-Canada Air Service Agreement that "[n]ever in commercial aviation history has a new agreement spurred such growth." According to the Secretary, "[t]he rest of the world . . . would gain by looking at what Americans and Canadians have accomplished together . [t]he lesson to learn is that the economic pie gets bigger when you open markets, not smaller."<sup>12/</sup>

---

<sup>12/</sup>

DOT Press Release **49-96**, March **5, 1996**.

Similarly, in tentatively granting antitrust immunity to the American/Canadian alliance, the Department noted the expansive growth of services under the new open skies agreement:

The new U.S.-Canada aviation agreement has resulted in large growth of new **transborder** service. As of December **1995**, U.S. and Canadian carriers had initiated scheduled nonstop service in **45** previously unserved markets (**12** by U.S. carriers, **27** by Canadian carriers, and six by both U.S. and Canadian carriers), and new competitive scheduled service was **instituted** in another **14** nonstop markets. Fourteen new U.S. cities and one new Canadian city now receive scheduled nonstop **transborder** service. Altogether, in December **1995**, there were **90 transborder** markets receiving scheduled service, compared to only **53** a year earlier, a **70** percent increase. As a consequence of these new services, **transborder traffic** and capacity skyrocketed. U.S.-Canada nonstop passengers in December **1995** grew **28** percent from December **1994**, while nonstop flights grew by **45** percent.... This growth can be directly attributed to the new bilateral agreement's elimination of governmental restraints on entry in the U.S.-Canada **transborder** market.

Order **96-5-38** at **18-19**. (Footnote omitted) The major U.S. and Canadian carrier networks are illustrated in Exhibit **JA-5**.

The Secretary's statements, coupled with the tentative findings in Order **96-5-38**, compel a determination here that approval of the Joint Application would be consistent with U.S. **foreign** policy objectives. Approving the United/Air Canada alliance will encourage other countries to liberalize their aviation markets, thus enabling their carriers to integrate within a global alliance network that includes U.S. carriers.

**C. Approval of the Alliance Expansion Agreement and the Grant of Antitrust Immunity Would Be Consistent With the Transportation Code**

Section **41309(b)** of the **recodified** Transportation Code provides that the Department “shall approve an agreement . when the Secretary **finds** it is not adverse to the public interest and is not in violation of this part.” The Alliance Expansion Agreement will lead to increased service, enhanced competition, and other significant consumer benefits, and will further the objectives of U.S. international aviation policy. Therefore, under the standard set forth in **§ 41309(b)**, there can be no question about whether the agreement should be approved.

Under **49 U.S.C. § 41308**, the Department is authorized to grant an exemption from the antitrust laws to permit persons to proceed with agreements approved under **§ 41309**, when the Department finds that such an exemption is required by the public interest. The Department's established policy is to grant antitrust immunity to agreements that it finds will not substantially reduce or eliminate competition, if it concludes that antitrust immunity is required in the public interest and the parties will not proceed with the transaction absent antitrust immunity.<sup>13/</sup> As Secretary **Peña** has explained, the central inquiry is whether “the overall net effect of . [the] transaction . . is pro-competitive and **pro-consumer**.”<sup>14/</sup>

---

<sup>13/</sup> See Order 93-1-11 at 11.

<sup>14/</sup> Statement of Secretary **Peña** before the Senate Commerce Committee on July 11, 1995, at 13-14.

1. The Grant of Antitrust Immunity for the Alliance Expansion Agreement Is Consistent **With** the Public Interest and the Department's Precedents

Granting antitrust immunity to the United/Air Canada alliance would be in the public interest. As explained above, the Alliance Expansion Agreement will enable United and Air Canada to expand the synergies available from linking their route networks, increase the availability of seamless, on-line services through **network-to-network** combinations, achieve economies of scale, lower prices, and increase competition. These benefits will produce lower costs and enable United and Air Canada to serve countless city-pairs more efficiently and compete more effectively against the American/Canadian alliance and the other carriers and carrier networks operating **transborder** and other services, thereby providing the public with increased service options at lower prices.

The objectives of the Alliance Expansion Agreement are identical to those of the alliance between American and Canadian, which received tentative approval from the Department just a few days **ago**.<sup>15/</sup> In tentatively granting antitrust immunity to the American/Canadian alliance, the Department concluded that the alliance would be procompetitive, even though there are overlapping city-pairs in which American and Canadian both provide nonstop service, and even though the **1995** U.S.-Canada

---

<sup>15/</sup> The objectives of the United/Air Canada Alliance also are similar to those of the **Lufthansa/United** and **KLM/Northwest** alliances, which the Department approved and **immunized** pursuant to Orders **96-5-27** and **93-1-11**, respectively, and to those of the **Delta/Swissair/SABENA/Austrian** alliance, which has received tentative approval from the Department. Order **96-5-26**.

Agreement imposes transitional limitations **on** new **transborder** services by U.S. carriers.

2. Implementation of the Alliance Expansion Agreement **Will Not Substantially Reduce or Eliminate Competition in Air Services**

---

In deciding whether an agreement will substantially reduce or eliminate competition, the Department's practice is to employ the same standards used to determine whether a transaction would violate the antitrust laws. In approving the alliance agreements between Lufthansa and United, and Northwest and **KLM**, and tentatively approving the agreements between American and Canadian, and Delta, Swissair, **SABENA**, and Austrian, the Department found that, because those agreements were intended to permit the airlines' operations to be integrated as if they were a single firm, the competitive effects of the agreement were equivalent to a merger and should be assessed using the standards of Section 7 of the Clayton Act.<sup>16/</sup> As was the case in KLM/Northwest, the Alliance Expansion Agreement "is intended to . [facilitate the integration **of**] the two carriers' operations so that they will operate as if they were a single **carrier**."<sup>17/</sup> The Department should, therefore, subject the Alliance Expansion Agreement to the same standard of review which was

---

<sup>16/</sup> See, e.g., Order **96-5-26** at **18**: "In determining whether the proposed transaction would violate the antitrust laws, we will apply the Clayton Act test used in examining whether mergers will substantially reduce competition in any relevant market."

<sup>17/</sup> See Order **92-11-27** at **13**.

applied to the **KLM/Northwest** agreement, and to all of the other agreements which have preceded the instant application.

In determining the likely competitive effects of the American/Canadian agreement, the Department concluded that there were three specific relevant markets. The U.S.-Canada market, the city pairs in which American and Canadian both offered nonstop service, and the beyond- and behind-gateway markets. In addition, the Department considered the enhanced competition between airline alliances in the global marketplace generally and in the U.S.-Canada **transborder** market in particular. The comparable markets for the United/Air Canada alliance are analyzed in turn below.

**3. The Proposed Alliance Will Not Substantially Reduce or Eliminate Competition in Any Market**

In tentatively determining that the American/Canadian alliance would not substantially reduce or eliminate competition between global alliances or between carriers in the United States-Canada **transborder** market, the Department relied quite heavily on the fact that there are a large number of services available in the U.S.-Canada market, and that the level of service has grown dramatically since the conclusion of the new U.S.-Canada **Agreement**.<sup>18/</sup> The Department also found that, despite the existence of transitional limits on new U.S. carrier **services** at Toronto, Montreal, and Vancouver, the U.S.-Canada market is highly competitive. **With respect to** overlapping nonstop, city-pair routes, the Department **concluded** that the

---

<sup>18/</sup>

See Order 96-5-38 at 17-19.



American/Canadian “alliance is unlikely to cause a significant reduction in competition” in the Chicago-Toronto **markets[,]**” one of **only** two city pairs the Department specifically reviewed.’ In the other city pair -- New **York/Newark**-Toronto, where entry remains limited until February of **1998** -- the Department adopted certain temporary limitations on the immunity granted that had been agreed to between the Department of Justice and American/Canadian? The Department of Justice apparently sought no limit on cooperation between American and Canadian on the route linking American’s Chicago hub with Toronto.

a. **Global Alliances**

In all of the recent cases considering the grant of antitrust immunity to carriers in alliance partnerships, the Department has recognized the competitive benefits produced by enabling such alliances to better compete with each other through enhanced cooperation made possible by the grant of antitrust immunity. This same factor was considered in the tentative approval of the American/Canadian alliance. The Department there found comparable benefits from such cooperation in **U.S.-Canada transborder** markets as those it found had resulted from the **Northwest/KLM** alliance as well as those expected to be achieved in other U.S.-Europe markets where enhanced alliances had already been approved:

... we believe it also important to recognize that the rapid growth and development of international airline alliance networks requires an additional perspective on competitive

---

<sup>19/</sup> **Id.** at 19.

<sup>20/</sup> **Id.** at 13-16.

impact -- the perspective of more broadly defined open aviation markets (in this case, the U.S.-Canada **transborder** market) in which travelers have multiple competing options for reaching destinations over multiple intermediate points. The pro-competitive effects of such alliances can be particularly evident in the case of markets between points lying behind the U.S. gateway and points lying beyond the Canadian gateway, where integrated alliances with coordinated connections, marketing, and services, can offer competition well beyond mere interlining. The competitive effect is evident, though perhaps less dramatic than in transatlantic markets, in the case of services between interior U.S. cities and Canadian gateways, or between U.S. gateways and interior Canadian cities. These types of alliances, as a result of their increased operational integration, can better offer a multitude of attractive new on-line services to thousands of **U.S.-Canada transborder** city-pair markets. Thus, a significant element in antitrust analysis is the extent to which facilitating airline integration (through antitrust immunity or otherwise) can enhance overall competitive conditions.

Order **96-5-38** at **17**.

The United/Air Canada alliance will increase competition in **transborder** markets in precisely the same way that the American/Canadian alliance has been tentatively found to do. Indeed, approval of the enhanced cooperation between United and Air Canada is even more compelling, now that it is likely that immunity for the American/Canadian alliance will be approved. Approval of the instant Joint Application will assure that there will be additional on-line competition in those markets where American and Canadian are now to be permitted to cooperate in order to improve their competitive presence. Consumers, particularly in the cities behind or beyond major **transborder** gateways, are entitled to benefit no less from the increased

competition and service opportunities offered by the United/Air Canada alliance than from that offered by American/Canadian.

**b. United States-Canada**

The proposed Alliance Expansion Agreement would also have a procompetitive effect upon the U.S.-Canada market. The U.S.-Canada market is highly competitive -- indeed, likely the most competitive international aviation market in the world -- with **32** airlines offering nonstop services in a large number of **city-pairs**.<sup>21/</sup> By Conferring antitrust immunity upon the Joint Applicants, the Department would create a powerful incentive for the Joint Applicants to offer on a collective basis new **transborder** services that neither carrier could offer in its **own** right.

In the American/Canadian order, the Department's analysis showed that competition in the U.S.-Canada market is quite substantial:

During calendar year **1995**, our analysis shows that American's U.S.-Canada scheduled nonstop passenger share was **16.7** percent, and **CAI's** scheduled nonstop passenger share was **7.8** percent (the airlines combined share of the market was **24.5** percent). In contrast, Air Canada . . . had a **25.7** percent share. In addition, Delta had a **12.9** percent share of the overall U.S.-Canada market, Northwest **10.6** percent, United **9.2** percent, and **USAir 7.2** percent. In addition, several other U.S. and Canadian carriers had market shares between **0.5** percent and **2.8** percent.

Similarly, during the **12** months ended September **1995**, American's share of true U.S.-Canada Origin-Destination (**O&D**) passengers was **16.9** percent, and **CAI's** was **4.9** percent, for total market share of **21.9** percent. Air Canada

---

<sup>21/</sup> **See** Joint Application of American and Canadian dated November **3, 1995**, in docket **OST 95-792** at Exhibit **JA-2**.

had a **26.7** percent share of **O&D** passengers, Delta **16.0** percent, Northwest **11.9** percent, United **10.1** percent, and **USAir 8.1** percent. A number of other carriers had market shares between **0.1** and **2.0** percent.

Order **96-5-38** at **18**. (Footnote omitted)

Despite the fact that American had the largest market share of any U.S. carrier, the Department was not concerned that a combination of American and Canadian would significantly **reduce** competition in a market place that is “highly competitive, both as to nonstop and connecting service options” and where entry was no longer limited by bilateral **restraints**.<sup>22/</sup> Thus, the Department found that, in such a dynamic market, American and Canadian “will be unable to raise prices above (or reduce service below) competitive levels in the overall U.S.-Canada market without attracting new **competition**.”<sup>23/</sup>

The same conclusions apply with equal weight to the competition that will be added by the enhancement of the United/Air Canada alliance. Indeed, unless United, which is only the fourth largest U.S. **transborder** carrier, is allowed to combine with Air Canada to compete with American, the largest U.S. **transborder** carrier, approval of the American/Canadian enhanced alliance would seriously upset the competitive balance. Unless alliances are allowed to Compete with each other, the benefits of allowing alliance partners to enhance their cooperation would unfairly skew competition in favor of those alliances that are allowed to increase their cooperation

---

<sup>22/</sup> Order **96-5-38** at **19**.

<sup>23/</sup> Id.

without fear of antitrust litigation and would be contrary to the public interest factors relied upon by the Department in approving recent requests for antitrust immunity, including that of American and Canadian.

Indeed, the change in concentration in the U.S.-Canada market is relatively modest when compared with other alliances which previously have been approved by the Department. For example, **KLM's** share of the United States-Netherlands market far outstrips the market share held by Air **Canada**,<sup>24/</sup> and, in fact, the joint market share of United and Air Canada combined. In the **KLM/Northwest** proceeding, the Department determined that there would be no adverse competitive effects in the U.S.-Netherlands market despite the creation of a dominant market share:

In the United States-Netherlands market, **KLM** and Northwest will have a dominant market share. **KLM**, after all, is the major scheduled carrier in the Netherlands. Nonetheless, we do not believe that the proposed integration will enable the applicants to charge **supra-competitive** prices or to reduce service below competitive levels.

Even if a merger creates a firm with a dominant market share, the merger would not substantially reduce competition if other firms have the ability to enter the market within a reasonable time if the merged firms charged **supra-competitive** prices. Despite the dominant position of **KLM** in the U.S.-Netherlands market, we see no barriers to entry by other carriers in that market.

---

<sup>24/</sup> According to INS data, in **CY 1993**, **KLM** had a **69%** share of scheduled passenger arrivals in the U.S. from the Netherlands. Although these data include sixth-freedom passengers, they amply illustrate that the share of the U.S.-Netherlands market held by **KLM** at the time the Department granted antitrust immunity to the **KLM/Northwest** alliance was substantially greater than the share of the **transborder** market currently held by Air Canada. Based on current schedules, **Northwest/KLM** have a **62%** share of the U.S.-Netherlands market based on departures and a **67%** share based on available seats.

Order 92-11-27 at 15.

In its tentative approval of the alliance between Delta, Swissair, **SABENA**, and Austrian, the Department determined that "[e]ven if a merger creates a partnership with a preponderant market share, the merger would not reduce competition if competitors have free and open access to the **marketplace**."<sup>25/</sup> Unlike the U.S.-Canada market, in which **32** carriers currently compete, only three U.S. carriers now provide nonstop service in the U.S.-Switzerland and U.S.-Belgium markets, and only one U.S. carrier now provides nonstop service to Austria. Order 96-5-26 at 23. If the Department can determine that a "preponderant" market share in these markets raises few, if any, competitive difficulties, it must reach the same conclusion here, where the likelihood of new entry is even greater. Experience has shown that, since the signing of the **1995** U.S.-Canada Air Service Agreement, several carriers have introduced a wide variety of new air services. As the Department acknowledges in Order 96-5-38, this trend is likely to **continue**.<sup>26/</sup>

**c. City-Pairs**

In **KLM/Northwest**, the Department expressed concern over the alliance's effect on competition in the market for air transportation between the two city pairs in which

---

<sup>25/</sup> Order 96-5-26 at 23. According to INS data, for the **12-months** ended August **1995**, Austrian had a **79%** share of the U.S.-Austria market, **SABENA** had a **41%** share of the U.S.-Belgium market, and **Swissair** had a **68%** share of the U.S.-Switzerland market. In each case, these carriers' individual market shares exceed the combined **transborder** market shares of United and Air Canada.

<sup>26/</sup> Order 96-5-38 at 18-19.

both **KLM** and Northwest offered service -- Minneapolis/St. Paul-Amsterdam and Detroit-Amsterdam. **KLM** and Northwest were the only carriers offering nonstop or single-plane service in those two city pairs. The Department nonetheless concluded that the pro-competitive advantages of that integration outweighed the possible loss of competition.<sup>27/</sup>

There are several reasons why the nonstop routes served by both United and Air Canada should be of even less concern. There are five such routes: San Francisco-Vancouver, San Francisco-Calgary, San Francisco-Toronto, Los Angeles-Vancouver, and Chicago-Toronto. = Unlike **KLM/Northwest**, in three of these city pairs, one or more other carriers provide an alternative nonstop service on the route in competition with United and Air **Canada**.<sup>28/</sup> Furthermore, as detailed below, the

---

<sup>27/</sup> Order **92-11-27** at **16**.

<sup>28/</sup> The carriers also currently code share (or will as of June **29**) in ten additional city pairs, where only one of them operates its own aircraft. These city pairs are: Chicago - Vancouver (**UA/AC\***); Chicago-Ottawa (**AC/UA\***); Chicago-Montreal (**AC/UA\***); Chicago-Winnipeg (**AC/UA\***); Denver-Calgary (**UA/AC\***); Denver-Vancouver (**UA/AC\***); Los Angeles-Montreal (**AC/UA\***); Los Angeles-Toronto (**AC/UA\***); Washington (**Dulles**) - Ottawa (**AC/UA\***); Washington (**Dulles**) - Toronto (**AC/UA\***). See Exhibit **JA-2**. In two of these city pairs -- Denver-Vancouver and Denver-Calgary -- Air Canada presently operates its own nonstop services, but has announced its intention to terminate those services effective July **1, 1996**. Neither carrier blocks space on the other on any of these routes.

In Order **96-5-38**, the Department does not discuss competitive conditions in **city** pairs where American and Canadian code share but do not both operate nonstop service with their own aircraft, noting only that "except for the short term phase-in limitations on U.S.-flag entry at Montreal, Toronto, and Vancouver, there are no barriers to entry in any of the other **transborder** code-sharing markets." Id. at **20**. The Department thus concluded that the American/Canadian alliance would "not significantly detract from competition in any of the alliance's other existing **transborder** code-sharing passenger markets." Id.

<sup>29/</sup> See Exhibit **JA-6**.

number of carriers offering one-stop and online connecting services in these city pairs, which the Department acknowledged in KLM/Northwest disciplines the fares charged by the nonstop carriers, is substantially greater than it was in the U.S.-Netherlands city pairs at issue **there**.<sup>30/</sup>

Finally, under the U.S.-Canada agreement, there either are, or soon will be, no restrictions on entry or expansion of service in any **transborder** city pair. Regulatory barriers will no longer exist to prohibit any of the **30** other U.S. and Canadian carriers that already serve the **transborder** market from commencing, or adding to, nonstop service in any of these city pairs, or increasing the number of connecting services available via hub cities in either Canada or the United **States**.<sup>31/</sup> The absence of legal barriers to entry or expansion thus should further ensure the competitive performance of these markets and alleviate any Departmental concerns.

In any event, based on the Department's tentative findings with respect to the city pairs where American and Canadian both operated nonstop service, there is no rationale for withholding antitrust immunity with respect to any of the United/Air Canada city pairs. In the American/Canadian case, the only nonstop city pair in which immunity was limited was New York-Toronto. The U.S.-Canada agreement limits new entry by U.S. carriers into this city pair until February of **1998**.

---

<sup>30/</sup> **See** Order **92-11-27** at **16**.

<sup>31/</sup> Certainly, there is no argument at all that Air Canada has any advantage over other airlines in starting or maintaining **transborder** set-vices at Vancouver or Calgary, which are not Air Canada hubs. Vancouver, in fact, is a hub for Canadian, which is the leading carrier there.



American/Canadian, therefore, agreed with the Department of Justice that they would temporarily limit their cooperation with respect to certain U.S. point of sale local **traffic** in that city-pair. The Department has tentatively accepted that agreement.

As set forth below, there is no reason for the Department to limit the immunity to be granted United/Air Canada in any of the city pairs where they both operate nonstop service, given the characteristics of those markets. United and Air Canada do not both provide nonstop service between New York and Toronto, the one city pair where the Department temporarily limited the immunity granted to American and Canadian.

With respect to the Chicago-Toronto route, American is the largest carrier in the market. Nonetheless, it has been given unlimited antitrust immunity to cooperate with Canadian on the route, even though Canadian also serves the route nonstop. In order to compete on an equal basis with American/Canadian, United and Air Canada must have the same **scope** of immunity. To allow the leading carrier in the market to have full antitrust immunity to cooperate with one of three other nonstop competitors, but to deny similar relief to the second and third largest carriers, would deny competitive parity to United and Air Canada? In these circumstances, United and Air Canada are entitled to antitrust immunity In the Chicago-Toronto market on the basis of the precedent set by the unconditional antitrust immunity granted to

---

<sup>32/</sup> As shown in Exhibit **JA-6**, there are also two other carriers competing in the Chicago-Toronto market with **onestop** on-line connecting services.

American and Canadian in that city pair, assuming that that tentative decision is made **final**.<sup>33/</sup>

As for the other city pairs with overlapping nonstop service, all have sufficient competition from other carriers to ensure no loss of competition from a grant of immunity to United and Air Canada. On the San Francisco-Toronto route, for example, five other carriers provide **onestop** or online connecting service, which, as noted above, the Department found in **KLM/Northwest** will serve to discipline the fares charged by United/Air Canada on this **route**.<sup>34/</sup>

On the San Francisco-Calgary route, three other carriers offer on-line services.” Calgary is not a hub for either United or Air Canada, and unlike Toronto, there are no interim restrictions on entry by other carriers in **transborder** markets involving Calgary.

On the Vancouver-Los Angeles route, two other carriers operate nonstop services (Canadian and Delta), and three offer nonstop set-vice between Vancouver and airports serving the San Francisco Bay area (Canadian and Delta at **SFO** and American at **SJC**). There are also six and **five** other on-line competitors in these city pairs, respectively.%’ Vancouver is not a hub for either United or Air Canada, and Air Canada’s presence there is quite limited, with an insignificant market share of less

---

<sup>33/</sup> **See** United’s Comments filed today in Docket **OST-95-792** for a more detailed discussion of the legal issues arising from these applications.

<sup>34/</sup> Exhibit **JA-6**.

<sup>35/</sup> **Id.**

<sup>36/</sup> **Id.**

than four **percent**.<sup>37/</sup> United and Air Canada combined at Vancouver have a total market share significantly below the **33** percent share held by American/Canadian **combined**.<sup>38/</sup> Under these circumstances, there is no need to restrict the grant of antitrust immunity applicable to United/Air Canada in any city pair where both carriers currently provide nonstop service.

***d. Behind and Beyond Gateway Transborder Markets***

In tentatively deciding to grant antitrust immunity to the American/Canadian alliance, the Department found that:

this alliance will have a strong pro-competitive impact, bringing on-line service to nearly **20,000 transborder city-pair** markets with an estimated traffic of over 9 million passengers. In particular, the alliance will significantly increase competition and service opportunities for many of the 4 million U.S.-Canada passengers in behind-U.S. gateway and beyond-Canadian gateway markets....

Order **96-5-38** at **17**; Footnote omitted.

As noted previously, the United/Air Canada alliance will also significantly increase online competition in these behind and beyond gateway markets on both sides of the border. These services will benefit “many passengers [that] now lack convenient on-line service . . . where integrated alliances with coordinated connections, marketing and services can, therefore, offer competition well beyond traditional

---

<sup>37/</sup> Order **96-5-38** at **15**, n.31.

<sup>38/</sup> ***Id.***

interlining.<sup>39</sup> Thus, the United/Air Canada alliance, like that of American/Canadian, will offer enhanced competition in this type of **transborder** market.

**D. United and Air Canada Will Not Proceed With the Alliance Expansion Agreement Without Antitrust Immunity**

Antitrust immunity generally will not be granted to agreements that would not violate the antitrust laws, unless the parties establish that they would be unwilling to implement their agreement absent a grant of such immunity.<sup>40</sup> The Alliance Expansion Agreement contemplates joint sales/marketing activities, price and capacity coordination, and schedule coordination/integration across the entire combined networks of United and Air Canada. These arrangements would create service enhancements and produce efficiencies that could not be achieved in the absence of the Alliance Expansion Agreement. The Joint Applicants categorically state that, despite the benefits which **could** be created by implementing their Alliance Expansion Agreement, they will not carry out the full collaboration, coordination, and integration contemplated by their Alliance Expansion Agreement in the absence of antitrust immunity. Without the grant of immunity, there is no assurance that the alliance would not be challenged on antitrust grounds. Given the prohibitive **cost** and managerial time which would be required to defend even a meritless antitrust challenge, the Joint Applicants would be unwilling to implement their Alliance

---

<sup>39/</sup> Order ~~96-5-38~~ 20.

<sup>40/</sup> See Orders **96-5-27** at 9 and **92-11-27**.

Expansion Agreement without receiving the approval and antitrust immunity requested herein.

#### IV. OTHER ISSUES

##### A. **CRS**

Consistent with the Department's decision in KLM/Northwest and United/Lufthansa, United and Air Canada do not request antitrust immunity relating to the management of their interests in the **CRS** systems owned and managed by the Galileo International Partnership. In fact, the Alliance Expansion Agreement specifically excludes from the activities the parties intend to coordinate "the management of their respective interests in the **CRS** systems owned and operated by Galileo International Partnership." Article 4.10. (Exhibit JA-1).

The parties do, however, intend to harmonize their information systems, resources and functions, including their internal reservations systems, inventory and yield management systems, and other distribution and operational systems. The immunity granted to Northwest and **KLM**, and United and **Lufthansa**, and tentatively granted to American and Canadian, expressly extended to each of the alliances the ability to coordinate the presentation and sale of each other's services in **CRS** systems and to cooperate with regard to the operation of their internal reservations systems." As the Department concluded with respect to Northwest and **KLM**, the carriers "will need the ability to cooperate on the display of their services in **CRSs**

---

<sup>41/</sup> See Orders 96-5-38 at 4-5; 96-5-27; and 93-1-11.

and to integrate such operations as yield management and schedule coordination . . .

.<sup>42/</sup> The same conclusion applies with equal force herein.

#### **B. Duration of Approval**

United and Air Canada urge that the Department grant the requested approval and immunity for at least a five-year term, consistent with the duration of approvals granted by the Department to United and **Lufthansa** in Order **96-5-27**, and to **KLM/Northwest** in Order **93-1-11**. As the Department concluded in **KLM/Northwest**, "a shorter term may not allow the full effect of the implementation of the Agreement to **become** apparent, Furthermore, Section **414** [now **49 U.S.C. 41308**] does not require us to review the implementation of the Agreement within a shorter period of time."<sup>43/</sup>

#### **V. RESPONSE TO REQUEST FOR ADDITIONAL INFORMATION**

In conjunction with the application filed by Delta, Swissair, **Sabena**, and Austrian for approval of their own Alliance Agreement and for the grant of antitrust immunity, the Department requested those carriers to provide the Department with certain additional information about the nature of their proposed relationship, the status of competition in the relevant markets, and a host of other matters. Since then, other applicants for antitrust immunity have included the information requested by the Department by Order **95-9-27** with their own applications. In order to enable

---

<sup>42/</sup> Order **93-1-11** at **15-16**.

<sup>43/</sup> Order **93-1-11** at **16**.

the Department to act expeditiously on the Joint Application, United and Air Canada are submitting the following information, which is comparable to that requested from Delta and its partners.

**A. Provide All United and Air Canada Corporate Documents Dated Within the Last Two Years That Address Competition in the U.S.-Canada Market**

United and Air Canada will separately file the requested documents, accompanied by motions for confidential treatment under Rule 39.

**B. Provide All United and Air Canada Studies, Surveys, Analyses and Reports Dated Within the Last Two Years, Which Were Prepared by or for Any Officer(s) or Director(s) (or Individual(s) Exercising Similar Functions) for the Purpose of Evaluating or Analyzing the Proposed Enhanced Alliance With Respect to Market Shares, Competition, Competitors, Markets, Potential for Traffic Growth or Expansion Into Geographic Markets, and Indicate (if Not Contained In the Document Itself) the Date of Preparation, the Name and Title of Each Individual Who Prepared Each Such Document**

United and Air Canada will separately file the requested documents, accompanied by a Motion for Confidential Treatment under Rule 39.

**C. Describe Separately United's and Air Canada's Strategic Objectives In Forming the Alliance Expansion Agreement**

**United:** United is entering into the Alliance Expansion Agreement because a code-sharing relationship alone with Air Canada is insufficient to capture all of the efficiencies and **consumer** benefits potentially realizable from a fully integrated global route network. United's alliance with Air Canada will complement its other global alliances and will enable United to expand its global network into city pairs that it

cannot serve economically with its own aircraft. With antitrust immunity, United and Air Canada will be able to plan and coordinate service over their respective route networks as if they were a single firm. With this planning and coordination, United expects to lower its costs, expand the number of **transborder** and international **city-**pairs in which it is able to hold out service under its "**UA**" designator code, operate at higher load factors than it would otherwise, and improve its ability to compete against other carriers and carrier alliances operating in the global marketplace.

Air Canada: Air Canada's objectives in forming a closer alliance with United are: (i) to create the necessary basis for effective competition with other global alliances (e.g., American/Canadian, British Airways/USAir, Delta/SABENA/Austrian/Swissair); (ii) to create a seamless air transportation system throughout the United/Air Canada alliance network; and (iii) to maintain competitive parity with the alliance between American and Canadian -- in particular by allowing Air Canada to provide competitive on-line services to destinations that would otherwise be impractical to serve using its own equipment -- because without a closer alliance with United, Air Canada would be placed at a severe disadvantage in the **transborder** market.

**D. Describe the Impact That Implementation of the Alliance Expansion Agreement Would Have on United's Operating Revenue and Operating and Net Profit and Loss Results**

United expects that implementation of the Alliance Expansion Agreement will have a positive effect on its operating revenue and its operating and net profit and loss results. Even though United anticipates that integrating pricing and yield management functions on services operated jointly with Air Canada will open



opportunities for introduction of lower promotional fares and help to ensure that passengers have a greater opportunity to purchase promotionally priced seats, it expects its operating revenues to rise. This is because United expects that revenues from newly generated passengers will more than offset any diminution in yield from lower fares or increased carriage of discount traffic. United also expects its operating and net earnings will improve because it will be able to operate its joint services with Air Canada more efficiently. With operating revenues rising and costs either falling or rising less rapidly than otherwise, United expects its operating results to improve.

**E. Provide Forecasts and Data Concerning Traffic Diversion From U.S.-Flag Carriers as a Result of Approval of the Application**

Neither United nor Air Canada has prepared any forecasts of or has any data about likely traffic diversion from U.S.-flag carriers as a result of the approval of this application. Moreover, because United and Air Canada do not yet know the city-pairs in which they will add service if granted antitrust immunity, there is no way a reliable forecast of potential diversion could be prepared. In any event, United and Air Canada question whether diversion will, in fact, occur or whether, if it did, the Department should be concerned about such diversion.

Although United and Air Canada expect to expand their joint services if granted antitrust immunity, there is no reason to assume that this expansion will cause **traffic** to be diverted from other U.S. carriers. In most cases, United and Air Canada expect that the new joint services they will offer will represent a significant improvement over

currently available **service**. Historical experience shows that improvements in service stimulate new demand, increasing the business available to all market participants. With an overall increase in demand, other carriers serving these markets will suffer traffic diversion only if they fail to respond to the improved service offered by United/Air Canada. Because other carriers and carrier alliances can respond to any service improvements United and Air Canada might make, and thereby avoid having their traffic diverted away from themselves, there is no reason for the Department to be concerned about diversion.

**F. Discuss Whether and to What Extent a Grant of This Application Would or Should Affect United's or Air Canada's Participation In IATA, Especially Price Coordination**

Carriers in alliances, both with and without antitrust immunity, participate in **IATA**. Fares in the **transborder** market are not governed by the **IATA** tariff coordination process. Approval of the Joint Application should not affect the participation of United or Air Canada in **IATA**. In American/Canadian, the Department agreed with this analysis and imposed no condition on **IATA** participation by American and **Canadian**.<sup>44/</sup>

**G. Provide O&D Traffic for the Most Recent 12-Month Period Available for Air Canada's Top 100 Markets With a U.S. Gateway as Origin or Destination**

Air Canada will file the requested information separately, accompanied by a Motion for Confidential Treatment under Rule **39**. Consistent with the Departments

---

<sup>44/</sup> Order **96-5-38** at **22**.

final decision in United/Lufthansa and the Show Cause Order in Delta/SABENA/Swissair/Austrian and American/Canadian, should the Department grant approval of, and antitrust immunity for, the Alliance Expansion Agreement, Air Canada is prepared to provide similar O&D Survey data. Specifically, Air Canada would agree to report full itinerary Origin-Destination Survey of Airline Passenger Traffic for all passenger itineraries that include a United States point (similar to the O&D Survey data now reported by United to the Department).

**H. Provide an Analysis of the Effect on International and U.S. Domestic Competition of the Proposed Closer Arrangements Between United and Air Canada**

Closer cooperation between United and Air Canada should increase both international and U.S. domestic competition. Internationally, United and Air Canada anticipate that closer cooperation will enable them to improve the efficiency of their joint services, add new routes, improve on-board service, lower prices, and expand the availability of discount fares. As a result, United/Air Canada expect to become more effective global competitors. To keep pace, other carriers and carrier alliances will have to take steps to respond to the new services, products, and prices made available by United/Air Canada, thus ensuring a more competitive international marketplace and significantly benefiting consumers.

In addition, closer cooperation between United and Air Canada will place increased commercial pressure on many competing airlines and alliances. This commercial pressure may ultimately lead other governments to open their aviation markets **so** that their carriers will have comparable opportunities to utilize alliances

with U.S. airlines in building global route networks. As these markets are opened to increased competition, the global marketplace will become more competitive.

In the U.S. domestic market, United anticipates that closer cooperation with Air Canada will enable it to use its resources more productively and to lower its costs, strengthening United as a domestic as well as an international competitor. As United becomes a more efficient domestic competitor, other carriers will have to increase the efficiency of their domestic systems in order to remain competitive. An increase in the efficiency of carriers' domestic networks necessarily increases the competitiveness of the domestic marketplace.

I. **Describe the Extent to Which Airport Facilities, Including Gates and Slots, Are Available to U.S.-Flag Carriers Who Want to Begin or Increase Service at Cities Served by Air Canada and United (i.e., Toronto, Montreal, Vancouver, Winnipeg, Calgary, Halifax, Yarmouth, Quebec, and Ottawa)**

Air Canada and United are not aware of any restrictions on airport access, including gate and slot restrictions, at any of the Canadian airports both serve. All of these airports have capacity to handle entry by additional U.S. carriers or increased services by existing U.S. carriers. As the Department is aware, Pearson International Airport in Toronto has nominal slot filing requirements, but these do not restrict entry. Moreover, a new runway is currently under construction there, and terminal facilities are readily available. At Vancouver International Airport, a new international terminal opens this month which will also serve **transborder** operations. **Facilities at Dorval** International Airport in Montreal and all other Canadian airports are capable of accommodating new or increased service.

**J. Discuss Significant Service and Equipment Changes Anticipated by United and Air Canada and the Integration of United's Domestic Route System With Air Canada's Transborder Route System**

Over time, the parties anticipate expanding the number of **transborder city-** pairs in which they provide joint service. In addition, they expect that the integration of their route systems into a global network not only will expand the number of **city-** pairs in which they offer on-line service, but also will improve the quality of the service as discussed above. This, in turn, should stimulate demand over their integrated network, increasing load factors and leading, ultimately, to the acquisition of more and larger capacity aircraft than would be required without integration. However, the timing of such new aircraft acquisitions cannot be known at this time.

United and Air Canada have already taken steps through their code-sharing alliance to integrate, to some extent, United's domestic route network with Air Canada's **transborder** system. With increased cooperation, the parties anticipate expanding this integration and operating the integrated network more efficiently.

**K. Describe Any Effect of Granting This Application on United's Civil Reserve Air Fleet (CRAF) Commitments**

Granting this application should have no effect on United's **CRAF** commitments.

**L. Discuss Any Labor Effects of the United/Air Canada Alliance and Whether, How and To What Extent Employees of United and Air Canada Will Be Integrated, Along With a Discussion of Whether the Transaction or a Similar Type of Transaction Had Been the Subject of Collective Bargaining Discussions Between United and Its Unions, and a Discussion of Whether Both Union and Non-Union Employees Adversely Affected by the Alliance Would Be Compensated or Otherwise Protected**

The transaction raises no significant labor issues. There will be no integration of employees resulting from the application. United and Air Canada remain independent, with neither having the ability to control the other. Unionized employees at both companies will continue to be represented by their respective unions. United does not anticipate that the transaction will have an adverse effect upon its unionized or non-unionized employees. On the contrary, United believes that the long-term impact of the transaction will be positive for the job security and advancement of existing employees and for new job creation.

**VI. CONCLUSION**

For the foregoing reasons, United and Air Canada request that the Department approve the Alliance Expansion Agreement under **49 U.S.C. § 41309**, and exempt United and Air Canada and their respective affiliates from the antitrust laws pursuant to **49 U.S.C. § 41308**, for a period of no less than five years in duration, to allow the Joint Applicants to proceed with the Alliance Expansion Agreement,

Respectfully submitted,

Morris R. Garfinkle

Morris R. Garfinkle  
Anita M. Mosner  
**GALLAND, KHARASCH, MORSE  
& GARFINKLE, P.C.**  
1054 Thirty-First Street, N.W.  
Washington, DC. 20007  
(202) 342-5200

Attorneys for  
AIR CANADA

DATED: June 4, 1996  
G:\b\005\502\jnapp3.207

Joel Stephen Burton

Joel Stephen Burton  
GINSBURG, FELDMAN AND **BRESS,**  
CHARTERED  
1250 Connecticut Avenue, N.W.  
Suite 800  
Washington, DC. 20036  
(202) 637-9130

Attorneys for  
UNITED AIR LINES, INC.

---

LIST OF EXHIBITS

Exhibit JA-1	Alliance Expansion Agreement
Exhibit JA-2	United/Air Canada <b>Transborder</b> Network
Exhibit JA-3	Air Canada's Code-Share Service Beyond United's Chicago and Denver Hubs
Exhibit JA-4	United's Code-Share Service Beyond Air Canada's Toronto Hub
Exhibit JA-5	<b>Transborder</b> Networks
Exhibit JA-6	On-Line Service In <b>Transborder</b> City Pairs Where UA And AC Operate Non-Stop



ALLIANCE EXPANSION AGREEMENT

**by and between**

AIR CANADA

and

UNITED AIR LINES, INC.

## TABLE OF CONTENTS

	Page
ARTICLE 1: DEFINITIONS .....	2
ARTICLE 2: SCOPE OF THE ALLIANCE .....	2
2.1 The Air Canada/United Alliance .....	2
2.2 Areas of Expanded Cooperation .....	2
2.3 Contractual Framework .....	3
2.4 Retention of Corporate Identity .....	3
ARTICLE 3: ALLIANCE ADMINISTRATION .....	4
3.1 Administrative Structure for the Alliance .....	4
3.2 The Alliance Committee .....	4
3.2.1 Alliance Coordination	4
3.2.2 Performance Monitoring	4
3.2.3 Quality Control	4
3.2.4 Further Improvements	4
3.3 Commercial Decision making	5
ARTICLE 4: PRINCIPLES FOR EXPANDED COOPERATION	5
4.1 Route and Schedule Coordination	5
4.2 Marketing, Advertising and Distribution	6
4.3 Co-Branding and Joint Product Development	7
4.4 Code Sharing .....	7
4.5 Pricing, Inventory and Yield Management Coordination	7

4.6	Revenue Sharing .....	8
4.7	Joint Procurement .....	8
4.8	Support Services .....	8
	4.8.1 Passenger and Ramp Services .....	8
	4.8.2 Training .....	9
	4.8.3 Catering .....	9
4.9	Cargo Services .....	9
4.10	Information Systems .....	9
4.11	Frequent Flyer Programs .....	10
4.12	Financial Reporting .....	10
4.13	Harmonization of Standards and Quality Assurance .....	10
4.14	Technical Services/Maintenance .....	10
4.15	Facilities .....	10
ARTICLE 5: IMPLEMENTATION .....		10
5.1	Implementation Plan .....	10
5.2	Implementing Agreements .....	11
5.3	Regulatory .....	11
5.4	No Infringement. ....	11
ARTICLE 6: ARRANGEMENTS WITH THIRD PARTY CARRIERS .		11
6.1	Admission of Third Parties .....	11
6.2	Alliances With Other Carriers .....	11
6.3	Commuter Carriers .....	11

A R T I C L E 7: C O N D I T I O N S	12
7.1 Conditions Precedent	12
7.1.1 Board and Management Approval	12
7.1.2 Regulatory Approvals	12
7.2 Cooperation :	12
7.3 Termination for Nonfulfillment of Conditions	12
7.4 Subsequent Approvals	12
ARTICLE 8: DURATION AND TERMINATION	13
8.1 Indefinite Term .	13
8.2 No Termination During Initial Term	13
8.3 Termination Based on Commercial Opportunity	13
8.4 T e r m i n a t i o n f o r C a u s e .	14
8.5 T e r m i n a t i o n W i t h o u t C a u s e	14
8.6 Effect of Termination .	14
8.7 Coordination With Termination of 1995 Agreements	14
ARTICLE 9: GOVERNING LAW AND DISPUTE RESOLUTION	14
9.1 Governing Law . . . . . —	14
9.2 D i s p u t e R e s o l u t i o n	15
9.3 Arbitration .	15
9.4 Specific Performance .	15

ARTICLE 10: CONFIDENTIALITY .....	15
10.1 Limitation on Disclosure and Use of Information .....	15
10.2 Response to Legal Process .....	16
10.3 Action Upon Termination .....	16
10.4 Exchanged Data .....	16
10.5 Survival .....	16
ARTICLE 11: FORCE MAJEURE .....	16
ARTICLE 12: SEVERABILITY .....	16
ARTICLE 13: HEADINGS .....	17
ARTICLE 14: GENERAL INDEMNIFICATION .....	17
ARTICLE 15: EXCLUSION OF CONSEQUENTIAL DAMAGES .....	18
ARTICLE 16: NOTICES. ....	18
ARTICLE 17: NO THIRD-PART-Y BENEFICIARIES .....	19
ARTICLE 18: AMENDMENTS .....	19
ARTICLE 19: COUNTERPARTS .....	20

THIS ALLIANCE EXPANSION AGREEMENT ("EXPANSION AGREEMENT") is made and entered into on May 31, 1996 ("the Effective Date") by and between:

**Air Canada** (which, together with any air carrier affiliates ("Affiliates") it may have, shall be referred to as "Air Canada"), a Canadian corporation with offices **Air Canada Centre, 7373 Cote Vertu West, Saint-Laurent, Quebec, H4Y 1H4;** and

**United Air Lines, Inc.** (which, together with any Affiliates it may have, shall be referred to as "United") a corporation organized and existing under the laws of the state of Delaware and having its principal executive office at **1200 East Algonquin Road, Elk Grove Township, Illinois 60007, U.S.A..**

In this Expansion Agreement, Air Canada and United may each be individually referred to as a "Party" and may be collectively referred to as the "Parties".

**WHEREAS**, pursuant to the Marketing Cooperation Agreement concluded between the Parties as of May 30, 1995 and the Code Share and Regulatory Cooperation Agreement concluded between the Parties as of May 30, 1995 ("the 1995 Agreements"), the Parties have operated an alliance based on limited cooperation which has created benefits for the traveling public; and

**WHEREAS**, the Parties now seek to enhance their alliance and expand it to all areas of the world served by either Party, whereby the cooperation between the Parties will be generally broadened and deepened; and

**WHEREAS**, the enhanced alliance will expand the benefits for the traveling and shipping public, and will facilitate new benefits including integrated service products, increased cost efficiencies, increased time efficiencies, and improved service options; and

**WHEREAS**, expansion of the Parties' cooperation in various commercially important areas may require a revenue sharing approach for certain routes served by the Parties; and

**WHEREAS**, the Parties wish to maintain their competitiveness with other major global alliances of carriers; and

**WHEREAS**, the Parties seek to take advantage of opportunities presented by the significant recent liberalization of bilateral aviation regimes between the United States and Canada; and

**WHEREAS**, the Parties expect to seek immunity from U.S. antitrust laws pursuant to 49 U.S.C. §§ 41308 and 41309, without which the Parties will not proceed with expansion of their alliance as set forth herein,

**NOW THEREFORE**, in consideration of the mutual covenants of the Parties, intending to be legally bound, the Parties hereby agree:

## **ARTICLE 1: DEFINITIONS**

Capitalized terms shall have the meanings ascribed to them in Schedule 1

## **ARTICLE 2: SCOPE OF THE ALLIANCE**

**2.1 The Air Canada/United Alliance.** The Parties shall plan and operate their respective networks, facilities and operations to create an integrated global passenger air transport service ('Air Canada/United Alliance'). The Air Canada/United Alliance formed pursuant to this Expansion Agreement reinforces and expands upon the alliance formed pursuant to the 1995 Agreements, which shall remain in full force and effect, The Air Canada/United Alliance shall be implemented by the Parties on the basis of and subject to the terms and conditions set out in the 1995 Agreements and this Expansion Agreement. In case of any inconsistency between the 1995 Agreements and this Expansion Agreement, this Expansion Agreement shall take precedence.

**2.2 Areas of Expanded Cooperation.** The Parties shall further integrate their activities in each of the following substantive areas as set forth in greater detail in this Expansion Agreement and in such Implementing Agreements as the Parties may conclude pursuant to Article 2.4 hereof:

- . Route and Schedule Coordination
- . Marketing, Advertising and Distribution
- . Co-Branding and Joint Product Development
- . Code Sharing
- . Pricing, Inventory and Yield Management Coordination

- Revenue Sharing
- Joint Procurement
- Support Services
- Cargo Services
- Information Systems
- Frequent Flyer Programs
- Financial Reporting
- Harmonization of Standards/Quality Assurance
- Technical Services/Maintenance
- Facilities

The Parties shall also explore and pursue other opportunities for operational efficiencies from joint utilization of either Party's services and facilities, whenever feasible.

**2.3 Contractual Framework.** This Expansion Agreement establishes the basic principles for expansion of the alliance already in operation pursuant to the 1995 Agreements. The Parties expect to enter into Implementing Agreements in order to define further and put into effect various details of the Air Canada/United Alliance. Each Implementing Agreement shall be based upon and consistent with, and its provisions shall be interpreted by reference to, this Expansion Agreement, except as the Parties may otherwise expressly agree in any such Implementing Agreement.

**2.4 Retention of Corporate Identity.** The Parties shall remain independent Air Carriers and each Party shall retain its own corporate identity. Except to the extent expressly provided otherwise in this Expansion Agreement or future agreements between the Parties, the Parties shall remain autonomous and hereby expressly reserve their independent decision-making powers. Each party shall be responsible for supervising its representatives on the Alliance Committee.



## ARTICLE 3: ALLIANCE ADMINISTRATION

**3.1 Administrative Structure for the Alliance.** The Air Canada/United Alliance shall be administered by the Joint Alliance Committee ("Alliance Committee") established pursuant to the 1995 Agreements. The decisions of the Alliance Committee shall, provided they are properly within the scope of responsibilities allocated to the Alliance Committee by this Expansion Agreement or an Implementing Agreement, be binding on the Parties. The Parties shall take all necessary steps to ensure that such decisions are implemented throughout their respective organizations.

**3.2 The Alliance Committee.** In addition to its responsibilities under the 1995 Agreements, the Alliance Committee shall administer the implementation and operation of the Air Canada/United Alliance in the substantive areas set forth in Article 2.2 hereof. In particular, unless instructed **otherwise** by the Parties acting jointly, the Alliance Committee shall be responsible for the following:

**3.2.1 Alliance Coordination.** The Alliance Committee shall be responsible for coordination of Air Canada/United Alliance activities conducted by the Parties, and for monitoring the application of this Expansion Agreement and of the Implementing Agreements.

**3.2.2 Performance Monitoring.** The Alliance Committee shall monitor the performance of the Air Canada/United Alliance and identify further areas in which synergies can be achieved.

**3.2.3 Quality Control.** The Alliance Committee shall define standards and goals for Air Canada/United Alliance services in the various operational areas, consistent with Article 4.13 hereof ("Harmonization of Standards and Quality Assurance") and shall monitor the performance of the Parties in comparison to those defined standards and goals.

**3.2.4 Further Improvements.** The Alliance Committee shall seek to identify ways to improve the performance of the Air Canada/United Alliance and, where appropriate, make specific recommendations to the Parties.

**3.3 Commercial Decisionmaking.** Each Party retains the right to make independent operational and business decisions. Nevertheless, the Parties will endeavor to cooperate regarding joint commercial efforts undertaken in connection with the Air Canada/United Alliance and this Expansion Agreement. If, after being addressed by the Alliance Committee, there is a disagreement between the Parties concerning an operational or business opportunity within the Alliance Committee's area of responsibility ("Commercial Opportunity"), each Party shall be free to make its own independent business decision with regard to the subject matter of the Commercial Opportunity, notwithstanding the existence of the Air Canada/United Alliance.

Notwithstanding Article 9 hereof, under no circumstances shall any Commercial Opportunity be the subject of any dispute resolution procedure pursuant to Articles 9.2 and 9.3 or any other proceedings in any national court, arbitral tribunal, administrative body, or an other legal body, and each Party hereby:

irrevocably undertakes not to commence, participate in, invite, invoke or otherwise assist in any such proceedings; and

irrevocably and unconditionally waives any and all rights of any description whatsoever in respect of any such Commercial Opportunity, except for the rights to preclude any proceedings in respect of any such Commercial Opportunity and to proceed unilaterally.

#### **ARTICLE 4: PRINCIPLES FOR EXPANDED COOPERATION**

**4.1 Route and Schedule Coordination.** The Parties shall coordinate route and schedule planning to the maximum feasible extent throughout their global route networks. The goals of their coordination shall generally be:

- **Maximizing Transport Options.** To offer the maximum number of traveling and shipping options of optimal quality to the public so that passengers and shippers are able to utilize the most efficient routings regardless of which Party is operating the flight.
- **Allocating Resources Efficiently.** To allocate and use the Parties' respective resources and capacities, including but not limited to their fleets and airport slots and gates, within the Air Canada/United Alliance network in the most efficient way, consistent with each Party's system-wide needs and regulatory constraints, to minimize costs such as delays and aircraft "dead time".

- **Enhancing Profitability.** To enhance profitability through coordinated route and schedule planning, joint determination of optimal capacities, improved service and increased efficiency.

**4.2 Marketing, Advertising and Distribution.** The Parties shall establish closer global cooperation and greater integration of their marketing, advertising and distribution networks, staffs, programs and systems, to the extent they jointly deem commercially beneficial. Without limiting the range of other coordinated activities the Parties may undertake, the Parties agree as follows.

- **Marketing.** The Parties shall seek to provide for joint marketing of Air Canada/United Alliance services, including joint marketing targeted to corporate, group and government customers and joint marketing of the Parties' frequent flyer programs which shall be coordinated as described in Article 4.11 hereto.

To facilitate marketing and sales integration, the Parties may jointly create: a unified commissions schedule using a single commissions accounting system; common override agreements for retail accounts, corporate accounts, and consolidator and special accounts; tour and vacations programs, and standard contracts.

- **Advertising.** The Parties shall seek to engage in joint advertising and promotion of Air Canada/United Alliance services. Such advertising shall seek to emphasize the geographic **scope** and breadth of services of the Air Canada/United Alliance.
- **Distribution. The Parties** shall seek to establish in certain geographic areas a coordinated sales force, which shall conduct for the Air Canada/United Alliance distribution activities, such as field sales, reservations, operating city ticket offices, and specialized services (e.g., those directed to travel agencies, corporations, governments, groups, and VIP customers). The Parties shall seek to represent each other in certain geographic areas through general sales agencies and similar means, and may coordinate their use of general sales agents and consolidators in certain geographical areas. The Parties shall also seek to consolidate selected sales administration and planning functions, create **common** sales goals and support activity plans, and develop and coordinate use of electronic products and distribution channels as described in Article 4.10 hereto.

**4.3 Co-Branding and Joint Product Development.** The Parties shall seek to w-brand existing products and to this end shall explore the creation of a joint logo and/or joint corporate markings. The Parties shall also seek to jointly develop co-branded products including, but not limited to: interior design, decoration and cabin layout; in-flight entertainment, amenities and services; and passenger ground services. The Parties shall also seek to share existing and future product and market research conducted by either Party and jointly undertake future product and market research. The Parties shall generally coordinate service offerings to ensure that **onboard** service throughout their respective networks is of a comparable high quality.

**4.4 Code Sharing.** In addition to the Code Sharing agreed under the 1995 Agreements, each Party shall, to the extent permitted by applicable treaties, laws and regulations, give the other Party the opportunity to engage in Code Sharing on any or all nonstop scheduled passenger **services** for which it is the operating carrier between Canada and the United States and such other services as the Parties may jointly select from time to time.

**4.5 Pricing, Inventory and Yield Management Coordination.** The Parties shall consult and coordinate on pricing, inventory and yield management with respect to all services included in their respective networks. Without limiting the range of other coordinated activities the Parties may undertake, the Parties shall, to the extent they jointly deem commercially beneficial:

- jointly develop, coordinate and offer fare products, including corporate fares, net fares and retail sale promotional fares that utilize the Air Canada/United Alliance's global capabilities;
- jointly develop, coordinate and prepare bids for group business and U.S. and Canadian government business utilizing the Air Canada/United Alliance's global schedule;
- jointly develop and apply consistent uniform auxiliary service charges and collection policies (e.g., excess baggage, pets);
- harmonize methods and procedures concerning revenue management (e.g., passenger protection, dupe check, wait list priorities); and
- jointly develop inventory management allocations consistent with the principles set forth in Article 4.1 hereof.

**4.6 Revenue Sharing.** The Parties may share net revenues (less certain operating costs) received by either Party for scheduled passenger air transportation on certain routes subject to such additions or exceptions as the Parties may mutually determine from time to time. The selection of routes subject to revenue sharing, the definitions of gross and net revenue and operating **costs**, and the Parties' respective revenue allocations shall be determined in accordance with specifications and rules to be established jointly by the Parties. Revenue sharing shall be implemented as soon as practicable after these specifications and rules have been agreed. Until such time as these specifications and rules have been agreed, the existing prorate agreements between the parties, and any future replacement or modification thereof, shall remain in effect under the conditions and terms specified therein.

**4.7 Joint Procurement.** **The Parties** shall seek economically viable joint procurement opportunities with the overall objective of reducing **costs**. Generally, the Parties shall seek cost reductions through;

- obtaining lower prices for necessary goods and services through volume purchases, establishment of **common** specifications, and improved access to **world** pricing data. Goods and services that may be subject to joint procurement include but are not limited to: ground handling services, general goods and services, field and station supplies, catering, crew uniforms, information technology products and services, fuel and maintenance;
- eliminating redundant purchasing activities in geographic areas where one Party has a superior presence and knowledge of that market; and
- cooperation between the existing purchasing organizations, the creation of dedicated joint procurement groups, and/or the establishment of single joint purchasing group.

**4.8 Support Services.**

**4.8.1 Passenger and Ramp Services.** The Parties shall continue their cooperative efforts with respect to ground and in-flight passenger and ramp services as established in the **1995 Agreements** (including, for example, passenger processing, through check-in, transfers, shared lounge facilities, baggage handling, **aircraft** ground handling, and maintenance), and they shall seek to extend this cooperation to all airports served by the Parties. In **third-**

country markets, the Parties will seek to identify the most cost-effective means of meeting their combined needs.

**4.8.2 Training.** The Parties shall implement joint training of crews and other personnel to the extent commercially and operationally feasible.

**4.8.3 Catering.** The Parties shall explore joint purchasing opportunities for their catering operations. They shall also seek to establish common specifications and requirements for food, beverage, and catering supplies and equipment to the extent commercially and operationally feasible.

**4.9 Cargo Services.** Without limiting the applicability of the other provisions of this Expansion Agreement to the Parties' cooperation in the area of cargo, the Parties shall seek to harmonize and integrate their cargo services in ways that will enable them to maximize the utilization of their global route networks and resources including, to the extent agreed in cargo-specific Implementing Agreements, the joint development of express cargo products, joint usage of cargo facilities and terminals, ground handling, coordination of trucking and RFS services, and the harmonization of standards for cargo products and services (e.g., joint I.S.O. 9000 certification).

**4.10 Information Systems.** The Parties shall seek to coordinate or harmonize their information systems, including without limitation inventory, yield management, reservation, ticketing, distribution and other operational systems. To this end, the Parties shall consider implementation of the following consistent with the needs of the Parties and the Air Canada/United Alliance.

- Joint development and coordinated utilization of new information technologies to facilitate compatible ticketing systems and products (such as electronic ticketing, Smart Cards, and Chip Cards), distribution channels (such as online networks), flight planning, accounting, maintenance, and such other systems and functions as the Parties may identify from time to time.
- Consolidation and/or coordination of existing information systems, resources and functions, such as voice and data networks, reservations networks, business resumption plans, backup site support, help desk support, system installation and maintenance, software distribution and licensing, LAN design/administration, and information systems business and technical skills.

The ultimate goal of such harmonization shall be the integration of all information technology systems to the fullest extent consistent with the commercial integration taking place in other areas of the Air Canada/United Alliance. The implementation shall be driven by the business needs for integrated information technology support. The Parties do not intend to coordinate the management of their respective interests in the CRS systems owned and operated by Galileo International Partnership.

**4.11 Frequent Flyer Programs.** The Parties shall expand coordination of their Frequent Flyer Programs, as set forth in Paragraph 4(C)(2) of the 1995 Marketing Cooperation Agreement, so that passengers will be able to accrue and redeem mileage on either program for all flights throughout the Parties' respective air transportation networks. The Parties shall consider full integration of their Frequent Flyer Programs.

**4.12 Financial Reporting.** To facilitate revenue sharing and to promote easier coordination of yield management, the Parties shall consider harmonizing their financial reporting practices, including revenue and cost accounting practices.

**4.13 Harmonization of Standards and Quality Assurance.** The Parties shall seek to harmonize their respective product standards, service levels and in-flight amenities. Pending such full harmonization, each Party shall in all respects afford customers of the other Party the same standard of service as it provides to its own customers.

**4.14 Technical Services/Maintenance.** The Parties shall explore the possibility of each Party providing to the other Party aircraft and ground equipment, technical and maintenance services at appropriate locations.

**4.15 Facilities.** The Parties shall seek to share facilities and services at airports served by the flights of both Parties, especially Code Shared Flights, to the extent commercially and technically reasonable.

## ARTICLE 5: IMPLEMENTATION

**5.1 Implementation Plan.** Subject to the conditions set forth in Article 7 hereof, the Parties intend to implement the Air Canada/United Alliance as provided for in this Expansion Agreement commencing on the later of the first business day following the fulfillment of all of the conditions precedent contained in Paragraph 7.1 hereof or the first business day following the expiration of any regulatory restrictions on the timing of the activities contemplated in this Expansion Agreement (in either

case, the "Implementation Date") and in accordance with an Implementation Plan to be developed jointly by the Parties.

**5.2 Implementing Agreements.** In order to create, develop, manage and maintain the Air Canada/United Alliance, the Parties have determined that Implementing Agreements may be necessary. The Parties shall use all reasonable endeavors to conclude Implementing Agreements in accordance with the Implementation Plan.

**5.3 Regulatory.** The Parties shall make a common approach to the U.S., Canadian and other relevant authorities for the purpose of obtaining all Regulatory Approvals relevant to the Air Canada/United Alliance.

**5.4 No Infringement.** No Party shall be required by this Expansion Agreement under any circumstances to take any action which would infringe any statute, regulation or Approval or the order of any authority or court having jurisdiction over such Party or over all or any of the transactions contemplated by this Expansion Agreement.

## **ARTICLE 6: ARRANGEMENTS WITH THIRD PARTY CARRIERS**

**6.1 Admission of Third Parties.** The Parties will be open to opportunities for cooperation with other potential participants in the Air Canada/United Alliance. Admission of third parties as additional participants in the Air Canada/United Alliance shall take place only by mutual consent of the Parties.

**6.2 Alliances With Other Carriers.** Each Party shall notify the other Party in advance and shall discuss with the other Party, any Cooperative Agreement which it proposes to enter into with any third party Air Carrier, or any significant extension or amendment which it proposes to make to any existing Cooperative Agreement with any third party Air Carrier, following the Effective Date. In order to maximize synergies and enhance customer service, the Parties shall seek to have alliances with the same third party Air Carriers, where feasible.

**6.3 Commuter Carriers.** Air Canada's regional connector carriers will be included under the terms of this Expansion Agreement, effective upon the Implementation Date. United shall use its best efforts to encourage its feeder network carriers to join the Air Canada/United Alliance, as expanded in accordance with this Expansion Agreement.



## ARTICLE 7: CONDITIONS

**7.1 Conditions Precedent.** This Expansion Agreement shall not take effect until and unless the following Board and management Approvals and regulatory Approvals have been achieved or obtained:

**7.1.1 Board and Management Approval.** Final internal management approval of this Expansion Agreement has been obtained by Air Canada, and final approval of this Expansion Agreement has been obtained by United from its board of directors;

**7.1.2 Regulatory Approvals.** All regulatory Approvals must have been obtained, including (without limitation) all requisite clearances from the United States Departments of Justice and Transportation, including the immunization of the Parties from liability under the antitrust laws pursuant to **49 U.S.C. §§ 41308 and 41309** for all activities provided for in this Expansion Agreement, subject to conditions, if any, that are acceptable to both parties.

**7.2 Cooperation.** The Parties shall cooperate fully and shall individually and collectively use all reasonable endeavors to fulfill or procure the fulfillment of the conditions set forth in Article 7.1 hereof and shall notify the other Party immediately upon the satisfaction of such conditions. The Parties may jointly agree to waive in writing in whole or in part all or any of the conditions precedent set forth in Article 7.1 hereof.

**7.3 Termination for Nonfulfillment of Conditions.** In the event of any of the matters set forth under Article 7.1 hereof not having been achieved or obtained (or waived by written consent of the Parties) on or before October 1, 1996 or such later date as may be agreed in writing between the Parties, either Party shall (provided it shall have complied with its obligations under Article 7.2 hereof) be entitled to terminate this Expansion Agreement upon written notice to the other Party.

**7.4 Subsequent Approvals.** The Parties shall cooperate fully and shall individually and collectively use all reasonable endeavors to procure any subsequent Approvals that may become necessary,

## ARTICLE 8: DURATION AND TERMINATION

**8.1 Indefinite Term.** The Air Canada/United Alliance shall continue indefinitely until terminated in accordance with Article 7.3 hereof or the following provisions of this Article 8.

**8.2 No Termination During Initial Term.** Except as provided in Article 8.4 hereof, neither Party shall be entitled to terminate this Expansion Agreement during an initial term of two years following the Implementation Date ("Initial Term").

**8.3 Termination Based on Commercial Opportunity** Except as provided in Article 8.4 hereof, following the expiration of the Initial Term; each Party shall be entitled to terminate this Expansion Agreement, by serving six months' written notice on the other Party, provided that:

**8.3.1** the reason for the termination is a failure to reach agreement on a Commercial Opportunity after reasonable effort to do so;

**8.3.2** the Commercial Opportunity in question, in the reasonable opinion of the terminating Party, concerns a fundamental, strategic operational or business decision relating to the Air Canada/United Alliance or to the terminating Party's business or is one of a number of unresolved Commercial Opportunities which in the reasonable opinion of the terminating Party cumulatively render a continuation of the Air Canada/United Alliance between the Parties undesirable for either or both of the Parties;

**8.3.3** the Parties' failure to resolve such Commercial Opportunity must, in the reasonable opinion of the terminating Party, create a fundamental adverse effect on the business, prospects or assets of the Air Canada/United Alliance or of the terminating Party; and

**8.3.4** the terminating Party has given prior written notice to the other Party that, in the event of the Parties failing to resolve the Commercial Opportunity, the terminating Party would consider seeking a termination pursuant to this Article 8.3.

Each Party's right to terminate this Expansion Agreement as described in this Section 8.3 is in addition to other termination rights then in effect as provided in Sections 8.4 and 8.5 hereof.

**8.4 Termination for Cause.** Either Party may terminate this Expansion Agreement at any time with immediate effect by serving written notice on the other Party within four months of the terminating Party first becoming aware of the occurrence of any of the following events:

**8.4.1** an Insolvency Event in respect of the other Party;

**8.4.2** a Change of Control in respect of the other Party; or

**8.4.3** a Material Default which is not capable of remedy or which, if capable of remedy, is not remedied to the terminating Party's reasonable satisfaction within thirty (30) days **after** that Party has given the other Party written notice requiring it to be remedied; or

**8.4.4** the withdrawal or termination of immunity from the antitrust laws of the United States.

**8.5 Termination Without Cause.** At any time after the fourth annual anniversary of the Implementation Date, either Party shall be entitled to terminate this Expansion Agreement by serving upon the other Party not less than twelve (12) months' notice in writing.

**8.6 Effect of Termination.** Termination of this Expansion Agreement shall be without prejudice to any rights or liabilities that accrued under this Expansion Agreement prior to such termination,

**8.7 Coordination With Termination of 1995 Agreements** Any Party terminating this Expansion Agreement shall also exercise its rights under the 1995 Agreements to terminate those agreements effective as of the same date as the termination of this Expansion Agreement or the earliest date thereafter that is permitted by the terms of the 1995 Agreements. Neither Party shall exercise any right to terminate the 1995 Agreements unless that Party also terminates or has terminated this Expansion Agreement,

## **ARTICLE 9: GOVERNING LAW AND CONTRACT DISPUTE RESOLUTION**

**9.1 Governing Law.** This Expansion Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, USA, without reference to the choice of law provisions thereof.

**9.2 Dispute Resolution.** The Alliance Committee shall attempt to resolve any disputes that arise concerning interpretation of this Expansion Agreement or the performance of either Party. The Alliance Committee shall meet within ten (10) days upon notice by either Party that a dispute exists. If the Alliance Committee cannot resolve any such dispute within seven (7) days following the first day of such meeting, the dispute shall be referred to the Parties, which shall meet personally or by telephone within five (5) days. If no resolution is reached within three (3) days following the first day of such meeting, either Party may refer the matter to arbitration as specified in Section 9.3 below.

**9.3 Arbitration.** After completing the procedure set forth in Section 9.2 above, either Party may refer any dispute concerning interpretation of this Expansion Agreement or performance of contractual obligations hereunder to arbitration. All such disputes shall be finally settled by arbitration. The arbitration shall be conducted in New York, New York in English in accordance with IATA Resolution 780, "Interline Traffic Agreement -- Passengers, Article 9 -Arbitration".

**9.4 Specific Performance.** The Parties hereby expressly acknowledge the uniqueness of the benefits to be derived from this Expansion Agreement and the likely inadequacy of damages to afford fully satisfactory relief and therefore agree that the failure of one Party to perform this Expansion Agreement in any Material respect shall entitle the other Party to enforce performance of this Expansion Agreement by seeking an order from the arbitrators compelling the defaulting Party to perform its obligations hereunder, Each Party fully agrees that if it is the Party against which such order for specific performance is sought, it shall not directly or indirectly contest the availability of such remedy under the circumstances of the case.

## **ARTICLE IO: CONFIDENTIALITY**

**10.1 Limitation on Disclosure and Use of Information.** Except as necessary in any proceeding to enforce any of the provisions of this Expansion Agreement, neither Party will, without the prior consent of the other, use, publicize or disclose to any third party, either directly or indirectly, any of the following (hereinafter "Confidential Information"):

- (i) this Expansion Agreement or any of the terms or conditions of this Expansion Agreement;
- (ii) any Implementing Agreement or the terms or conditions of any Implementing Agreement; or

- (iii) any confidential or proprietary information or data, in any form, received from and designated as such by the disclosing carrier,

unless and to the extent that such Confidential Information consists of documents in the public record.

**10.2 Response to Legal Process.** If either Party is served with a subpoena or other legal process requiring the production or disclosure of any Confidential Information obtained from the other Party, then the subpoenaed Party, before complying, will immediately notify the other Party and take reasonable steps to afford that other Party a reasonable period of time to intervene and contest disclosure or production.

**10.3 Action Upon Termination.** Upon termination of this Expansion Agreement, all Confidential Information, including any copies thereof made by the receiving Party, must be returned to the disclosing carrier or destroyed.

**10.4 Exchanged Data.** Neither Party shall use information or data provided by the other Party (whether or not designated confidential or proprietary) in connection with this Expansion Agreement except in fulfillment of its obligations hereunder.

**10.5 Survival.** This Article shall survive the expiration or termination of this Expansion Agreement.

## **ARTICLE 11: FORCE MAJEURE**

Neither Party will be liable for delays or failure in performance under this Expansion Agreement caused by acts of God, war, sabotage, strikes, labor disputes, work stoppage, fire, acts of government or any other event beyond the control of that Party.

## **ARTICLE 12: SEVERABILITY**

In the event that any one or more of the provisions of this Expansion Agreement shall be determined to be invalid, unenforceable or illegal, such invalidity, illegality and unenforceability shall not affect any other provision of this Expansion Agreement, and the Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Expansion Agreement. In that event or if an Approval is withdrawn or an Approval that becomes necessary subsequent to the Effective Date

is not granted, the Parties shall negotiate any appropriate adjustments to the terms of this Expansion Agreement so that the effects of such invalidity, illegality or unenforceability are shared fairly by the Parties. If the Parties are unable to negotiate such an adjustment within a reasonable period of time, such invalidity, illegality or unenforceability shall constitute a Material Default if its effects are Material. If the effects of such invalidity, illegality or unenforceability are not Material, the invalid, illegal or unenforceable provision shall not affect any other provision of this Expansion Agreement, and the Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Expansion Agreement.

#### ARTICLE 13: HEADINGS

The headings contained in this Expansion Agreement are inserted purely as a matter of convenience and neither form an operative part of it nor are to be used in interpreting its meaning.

#### ARTICLE 14: GENERAL INDEMNIFICATION

Except as otherwise provided herein, each Party shall indemnify and hold harmless the other Party, Affiliates of the other Party, and the directors, officers, employees, and agents of the other Party and its Affiliates from all liabilities, damages, losses, claims, suits, judgments, **costs**, and expenses, including reasonable attorneys' fees and expenses, directly or indirectly incurred by the other Party as the result of any claims that arise out of or in connection with the performance or failure of performance of the indemnifying Party's obligations hereunder. In addition, each Party shall indemnify and hold harmless the other Party, Affiliates of the other Party, and the directors, officers, employees, and agents of the other Party or its Affiliates from all liabilities, damages, losses, claims, suits, judgments, **costs**, and expenses, including reasonable attorneys' fees and expenses, directly or indirectly incurred by the other Party as the result of any claims by third parties that arise out of or in connection with any products or services received from or supplied by the indemnifying Party in connection with this Expansion Agreement and/or the Air Canada/United Alliance, This Article shall survive the expiration or termination of this Expansion Agreement,

#### ARTICLE 15: EXCLUSION OF CONSEQUENTIAL DAMAGES

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST REVENUES, LOST PROFITS, OR LOST PROSPECTIVE ECONOMIC ADVANTAGE, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT BASED ON CONTRACT, TORT, WARRANTY CLAIMS OR OTHERWISE IN CONNECTION WITH THIS EXPANSION AGREEMENT, AND/OR THE PRODUCTS OR SERVICES PROVIDED HEREUNDER, AND EACH PARTY HEREBY RELEASES AND WAIVES ANY CLAIMS AGAINST THE OTHER CARRIER REGARDING SUCH DAMAGES. THIS ARTICLE SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS EXPANSION AGREEMENT.

#### ARTICLE 16: NOTICES

Notices, demands, consents, approvals and any other communication required or permitted under this Expansion Agreement shall be in writing and given to the following persons:

For United:

United Air Lines, Inc.  
P.O. Box (EXOVQ) 66100  
Chicago, Illinois 60666  
U.S.A.  
Attn: Vice President-Resource Planning

United Air Lines, Inc.  
P.O. Box (EXOVQ) 66100  
Chicago, Illinois 60666  
U.S.A.  
Attn: General Counsel

For Air Canada:

Air Canada  
Air Canada Centre  
7373 Cote Vertu West  
Saint-Laurent, Quebec, H4Y 1 H4  
Attn: Executive Vice President and Chief Operating Officer

Air Canada  
Air Canada Centre  
7373 Cote Vertu West  
Saint-Laurent, Quebec, H4Y 1 H4  
Attn: General Counsel

Either Party may change the above names and/or addresses used for it after providing ten (10) days notice to the other Party. Notices shall be deemed given when received if transmitted by mail or overnight courier. Notices transmitted by teletype or facsimile shall be deemed given when sent if transmitted before 4:30 p.m. local time of the addressee, but shall be deemed given on the next day if so transmitted after 4:30 p.m. local time of the addressee.

**ARTICLE 17: NO THIRD-PARTY BENEFICIARIES**

This Expansion Agreement is for the benefit of the Parties and is not intended to confer any rights or benefits on any third party.

**ARTICLE 18: AMENDMENTS**

This Expansion Agreement may be modified only by a written instrument duly executed by or on behalf of each Party,

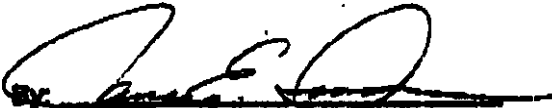


**ARTICLE 19: COUNTERPARTS**

This Expansion Agreement may be executed in one or more counterparts all of which taken together will constitute one and the same instrument.

**UNITED AIR LINES, INC.**

**AIR CANADA**

By:   
Name: JAMES E. Sullivan  
Title: Gen. Mgr. N. America

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ARTICLE 19: COUNTERPARTS**

This Expansion Agreement may be executed in one or more counterparts all of which taken together will constitute one and the same instrument.

**UNITED AIR LINES, INC.**

**AIR CANADA**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By:   
Name: G. Rota MacCormack  
Title: V.P. Corporate Strategy

# United/Air Canada Transborder Network

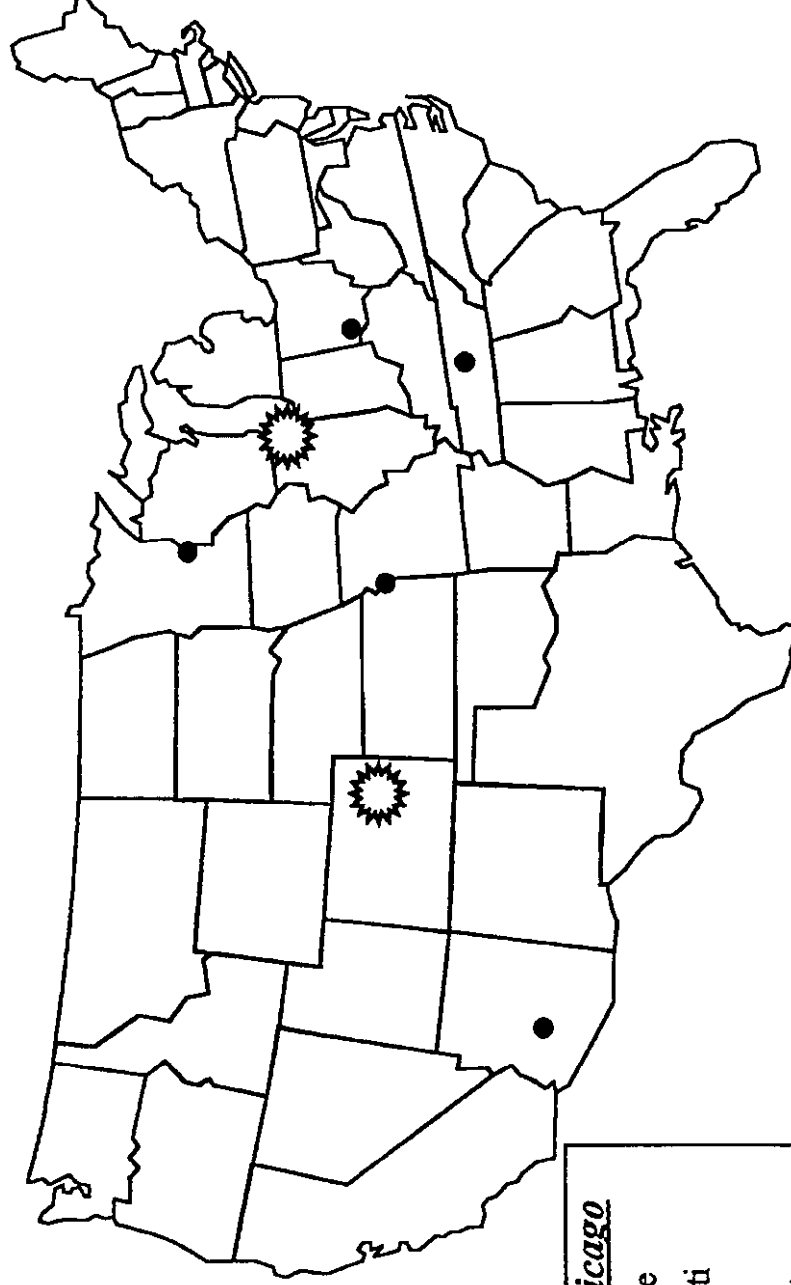
JA - 2  
Page 1 of 1

<u>Route</u>	<u>Operator</u>
Chicago - Vancouver	UA, AC*
Chicago - Ottawa	AC, UA*
Chicago - Montreal	AC, UA*
Chicago - Winnipeg	AC, UA*
Chicago - Toronto	AC, UA, UA*
Denver - Calgary	UA, AC*
Denver - Vancouver <sup>1</sup>	UA, AC*
Los Angeles - Montreal <sup>1</sup>	AC, UA*
Los Angeles - Toronto <sup>1</sup>	AC, UA*
Los Angeles - Vancouver	AC, UA
San Francisco - Vancouver	AC, UA, AC*
San Francisco - Calgary	AC, UA, AC*
San Francisco - Toronto	AC, UA
Washington/Dulles - Ottawa	AC, UA*
Washington/Dulles - Toronto <sup>1</sup>	AC, UA*

---

<sup>1</sup> Code-Share Flights Effective 29 June 1996

# Air Canada's Code-Share Service Beyond United's Chicago and Denver Hubs



## Beyond Chicago

Nashville  
Cincinnati  
Denver  
Kansas City  
Minneapolis-St. Paul  
Phoenix

## Beyond Denver

Phoenix (Effective 29 June 1996)

# United's Code-Share Service Beyond Air Canada's Toronto Hub

JA - 4  
Page 1 of 1



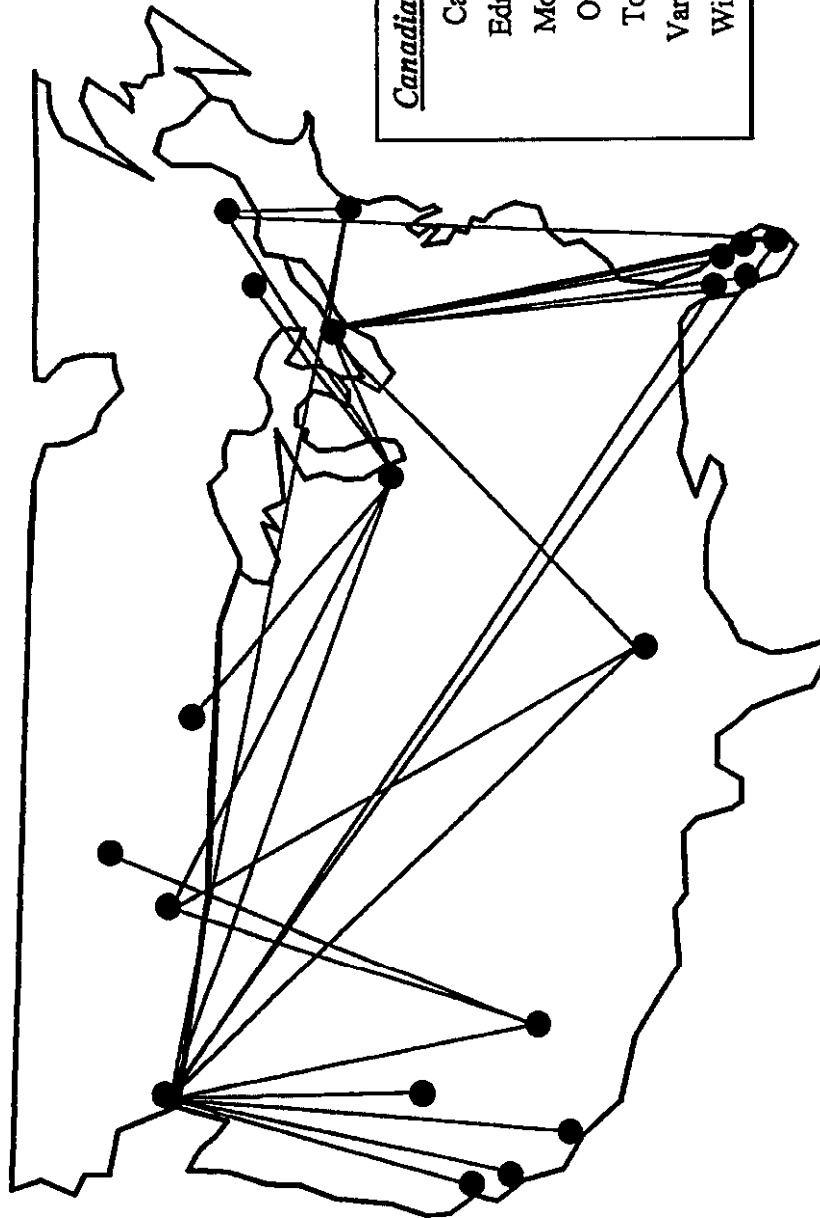
## **Beyond Toronto**

Halifax

Ottawa

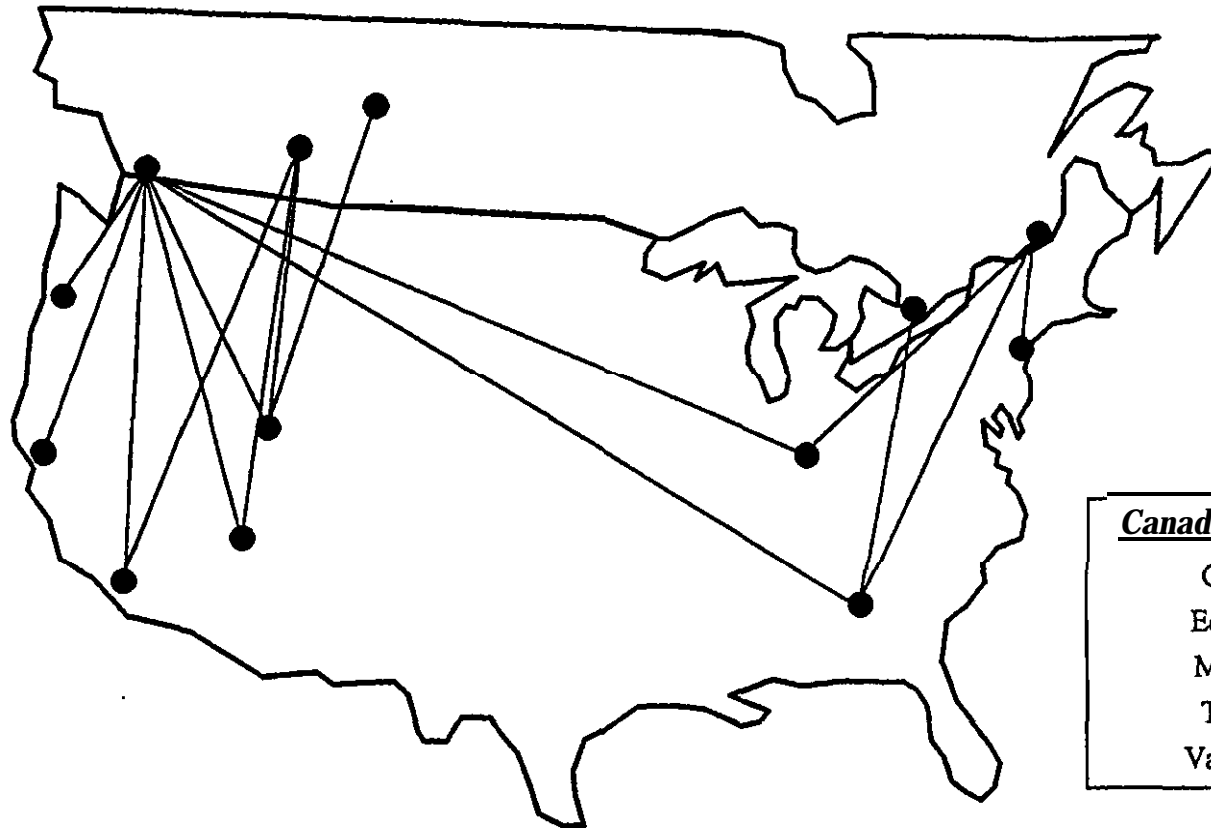
Quebec

# American/Canadian Transborder Network



# Delta Airlines Transborder Network

JA - 5  
Page 2 of 5



## U.S. Gateways

Atlanta  
Cincinnati  
Las Vegas  
Los Angeles  
New York  
Portland  
Salt Lake City  
San Francisco

## Canadian Gateways

Calgary  
Edmonton  
Montreal  
Toronto  
Vancouver

# Northwest Airlines Transborder Network

JA - 5  
Page 3 of 5



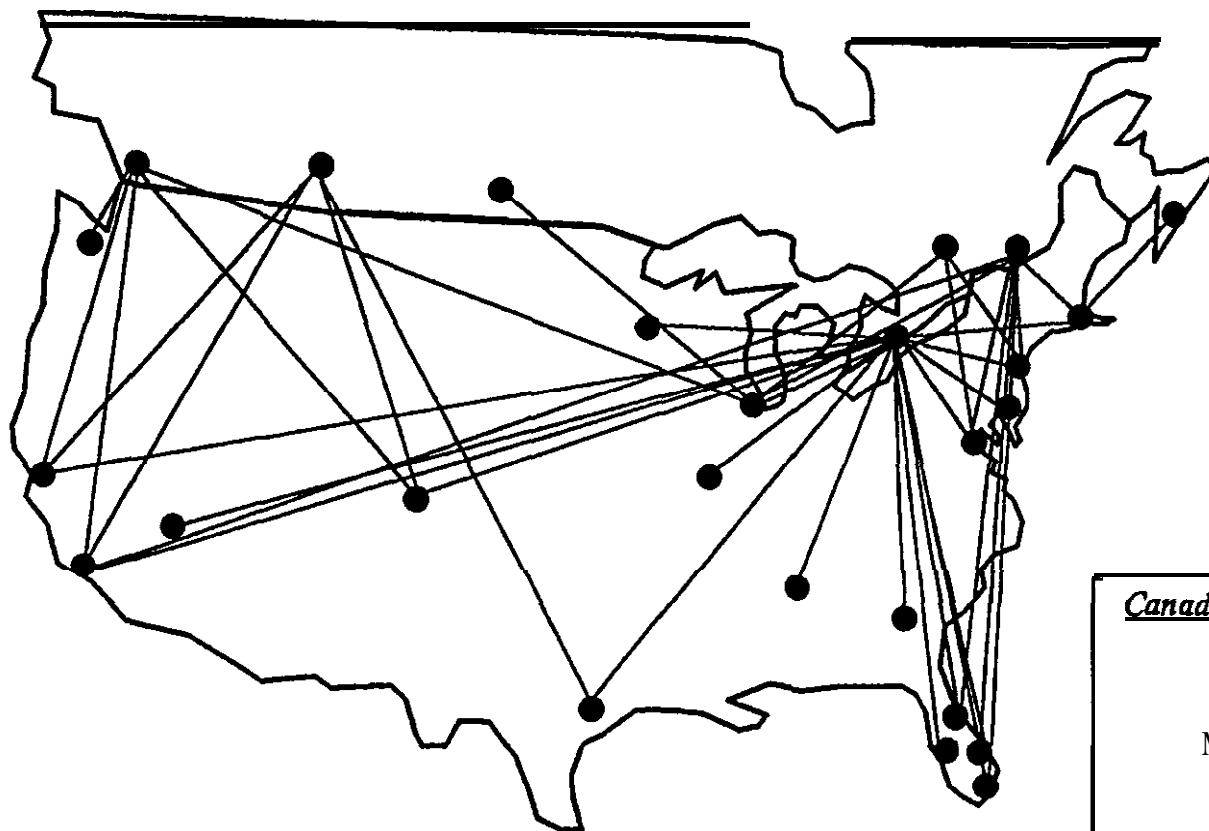


# United/Air Canada Transborder Network

JA - 5  
Page 4 of 5

## **U.S. Gateways**

Atlanta  
Boston  
Chicago  
Denver  
Fort Lauderdale  
Houston  
Las Vegas  
Los Angeles  
Miami  
Minneapolis-St. Paul  
Nashville  
New York/Newark  
Orlando  
Philadelphia  
St. Louis  
San Francisco  
Seattle  
Tampa  
Washington, DC



## **Canadian Gateways**

Calgary  
Halifax  
Montreal  
Ottawa  
Toronto  
Vancouver  
Winnipeg

# USAir Transborder Network

JA - 5  
Page 5 of 5



## On-Line Service In Transborder City Pairs Where UA And AC Operate Non-Stop:

### San Francisco/San Jose/Oakland-Vancouver

Carrier	Flight number	stops	Equipment	Frequency
Air Canada	523	0	DC9	Daily
Air Canada	527	0	A320	Daily
American Airlines	1183	0	MD80	Daily
Delta Air Lines	1618	0	B727	Daily
Canadian International	514	0	B737	Daily
Canadian International	1698	0	B727	Daily
United Airlines	1694	0	B727	Daily
Alaska Airlines	397/2172	1	MD80/DH8	Daily
Reno Air	201/411	1	MD80/MD80	xSa,Su

### San Francisco/San Jose/Oakland -Calgary

Carrier	Flight number	stops	Equipment	Frequency
Air Canada	760	0	A320	Daily
United Airlines	1648	0	B767	Daily
Canadian International	510/672	1	B737/A320	Daily
Delta Air Lines	974/377	1	B767/B727	Daily
Alaska Airlines	379/2126	1	MD80/DH8	Daily

**San Francisco/San Jose/Oakland -Toronto**

<b>Carrier</b>	<b>Flight number</b>	<b>Stops</b>	<b>Equipment</b>	<b>Frequency</b>
Air Canada	754	0	A320	Daily
Air Canada	756	0	B767	Daily
Air Canada	758	0	A320	Daily
United Airlines	206	0	B757	Daily
TWA	204/308	1	MD80/MD80	xSu
American Airlines	1758/460	1	B767/B757	Daily
Canadian International	510/988	1	B737/B767	xSa,Su
Northwest Airlines	52/748	1	B757/B757	Daily
USAir	76/88	1	B757/B757	Daily

**Chicago-Toronto**

<b>Carrier</b>	<b>Flight number</b>	<b>Stops</b>	<b>Equipment</b>	<b>Frequency</b>
Air Canada	812	0	DC9	xSa
Air Canada	814	0	DC9	xSa
Air Canada	816	0	DC9	Daily
Air Canada	820	0	DC9	Daily
American Airlines	632	0	B757	xSu
American Airlines	1214	0	F100	Daily
American Airlines	460	0	B757	Daily
American Airlines	1956	0	B757	Daily
			M80	Daily
American Airlines	1850	0	M80	Daily
Canadian International	546	0	B737	Daily
Canadian International	548	0	B737	Daily
United Airlines	416	0	B757	Daily
United Airlines	748	0	B737	Daily
united Airlines	100	0	DC10	Daily
united Airlines	524	0	B737	Daily
united Airlines	252	0	B757	Daily
Northwest Airlines	1776/844	1	B727/B757	Daily
USAir	1195/1154	1	M80/B757	Daily

Los Angeles-Vancouver

Carrier	Flight number	stops	Equipment	Frequency
Air Canada	533	0	A320	Daily
Canadian International	500	0	B737	Daily
Canadian International	504	0	B737	Daily
Canadian International	506	0	B737	Daily
Canadian International	508	0	B737	Daily
Delta Airlines	1966	0	B727	Daily
Delta Airlines	1465	0	B727	Daily
united Airlines	1674	0	B737	Daily
Alaska Airlines	371/2126	1	M80/DH8	Daily
America West	2218/819	1	B737/B737	Daily
Delta Airlines	1412/271	1	B727/B757	Daily
Reno Air	407/421	1	M80/M80	Daily

NOTE:

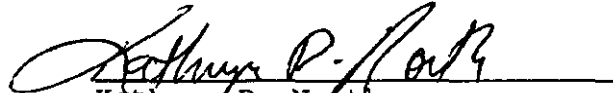
1. Carriers shown have service as indicated, and connection is made within three hours at a non-circuitous intermediate point.

2. Only one connection per carrier is shown for illustrative purposes; in most cases, the carriers indicated have additional daily one-stop connections.

SOURCE: APOLLO CRS, June 1996

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Joint Application of United Air Lines, Inc. and Air Canada on all persons named on the attached Service List by causing a copy to be sent via first-class mail, postage prepaid.

  
Kathryn D. North

DATED: June 4, 1996

**Carl B. Nelson, Jr.**  
Associate General Counsel  
**American Airlines, Inc.**  
1101 17th Street, N.W.  
Washington, D.C. 20036

**Robert E. Cohn**  
for Delta Air Lines, Inc.  
**Shaw, Pittman, Potts & Trowbridge**  
2300 N Street, N.W.  
Washington, D.C. 20037

**R. Bruce Keiner**  
**Crowell & Moring**  
1001 Pennsylvania Avenue, N.W.  
Suite 1100  
Washington, D.C. 20004

**Marshall S. Sinick**  
Squire, Sanders & Dempsey  
1201 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

**John Gillick**  
**Winthrop Stimson** Putnam  
1133 Connecticut Avenue, N.W.  
Suite 1200  
Washington, D.C. 20036

**John R. Degregorio**  
Senior Attorney  
Midwest Express Airlines  
700 11th Street, N.W.  
Suite 660  
Washington, D.C. 20001

**Elliott M. Seiden**  
**Megan Rae Poldy**  
Northwest Airlines, Inc.  
901 15th Street, N.W.  
Suite 310  
Washington, D.C. 20005

**Richard Fahy**  
Consulting Attorney  
**Trans World Airlines**  
808 17th Street, N.W.  
Suite 520  
Washington, D.C. 20006

**Steven A. Alterman**  
**Myers & Alterman**  
1220 19th Street, N.W.  
Washington, D.C. 20036

**Stephen H. Lachter**  
**Law Offices of Stephen Lachter**  
2300 N Street, N.W.  
Suite 725  
Washington, D.C. 20036

**Louis Turpen**  
**Director-Airports**  
Airports Division  
City and County of San Francisco  
P.O. Box 8097  
San Francisco, CA 94128

**Richard D. Mathias**  
**Cathleen Peterson**  
**Zuckert, Scoutt & Rasenberger**  
888 17th Street, N.W.  
Suite 600  
Washington, D.C. 20006

**Patrick P. Salisbury**  
**Salisbury & Ryan**  
1325 Avenue of the Americas  
New York, NY 10019

**Leslie Madsen**  
Air Service Manager  
Denver International Airport  
8500 Peña Blvd.  
Denver, CO 80249-2200

**Rich Leidl**  
for City and County of Denver  
Reid & Priest  
701 Pennsylvania Avenue, N.W.  
8th Floor  
Washington, D.C. 20004

**Frank Cotter**  
Assistant General Counsel  
**USAir, Inc.**  
2345 Crystal Drive  
8th Floor  
Arlington, VA 2227

**Theodore I. Seamon**  
1000 Potomac Street, N.W.  
Suite 300  
Washington, D.C. 20007

**Kenneth Quinn**  
Winthrop, Stimson, Putnam & Roberts  
1133 Connecticut Avenue, N.W.  
Suite 1200  
Washington, D.C. 20036

**Richard P. Taylor**  
**Septoe & Johnson**  
1330 Connecticut Avenue, N.W.  
10th Floor  
Washington, D.C. 20036

**Berl Bernhard**  
**Joseph L. Manson**  
**John R. Mietus, Jr.**  
**Verner, Liipfert, Bernhard,**  
McPherson and Hand  
901 15th Street, N.W., Suite 700  
Washington, D.C. 20005

**David R. Mosena**  
Commissioner  
Chicago Department of Aviation  
P. O. Box 66142  
**Chicago** O'Hare International  
Terminal Mezzanine  
Chicago, IL 60666

---

Steve **Gelband**  
**Hewes, Morella, Gelband**  
**& Lamberton**  
1000 Potomac **Street, N.W.**  
Suite **300**  
Washington, **D.C. 20007**

James A. Wilding  
General Manager  
**MWAA**  
44 **Canal** Center Plaza  
Alexandria, VA **223 14**

Roger **W. Fones**  
**Transportation**, Energy. Agricultural  
Section  
Antitrust Division  
Department of Justice  
**555 4th** Street. **N.W.**, Room **9104**  
**Washington, D.C. 20001**